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JURISDICTIONAL

STATEMENT

83-1394

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No.

In the Supreme Court of the United States

OCTOBER TERM, 1983

UNITED STATES OF AMERICA, ET AL., APPELLANTS

v.

MADISON D. LOCKE, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Whether Section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1744, violates the Due Process Clause of the Fifth Amendment to the extent it provides that failure to file a timely notice of annual assessment work or intention to hold a mining claim shall be deemed conclusively to constitute an abandonment of the claim.

2. Whether appellees "substantially complied" with the annual filing requirement of Section 314 and thereby retained their mining claims.

PARTIES TO THE PROCEEDING

In addition to the parties listed in the caption, the United States Department of the Interior; William P. Clark, Secretary of the Interior; the Bureau of Land Management; and Robert F. Burford, Director of the Bureau of Land Management, are appellants; and Rosalie E. Locke, Sam Buccambuso, and Tony Buccambuso are appellees.

TABLE OF CONTENTS

Opinions below	1
Jurisdiction	1
Constitutional, statutory and regulatory provisions involved	1
Statement	2
The questions are substantial	8
Conclusion	22
Appendix A	1a
Appendix B	14a
Appendix C	15a
Appendix D	16a
Appendix E	19a
Appendix F	25a

TABLE OF AUTHORITIES

Cases:

Alabama v. *Texas*, 347 U.S. 272	12
Anderson National Bank v. *Luckett*, 321 U.S. 233	14
Aubert v. *Fahey Group Mines, Inc.*, No. 24051 (1st Jud. Dist. Idaho Mar. 4, 1983)	9, 11
Cameron v. *United States*, 252 U.S. 450	16
FCIC v. *Merrill*, 332 U.S. 380	14
FPC v. *Idaho Power Co.*, 344 U.S. 17	12
Gibson v. *Chouteau*, 80 U.S. (13 Wall.) 92	12
Hickel v. *Oil Shale Corp.*, 400 U.S. 48	7, 21
Ickes v. *Virginia-Colorado Development Corp.*, 295 U.S. 639	21
Ivanhoe Irrig. Dist. v. *McCracken*, 357 U.S. 275	12

Cases—Continued: Page

Kleppe v. *New Mexico*, 426 U.S. 529 12
MacDonald v. *Best*, 186 F. Supp. 217 10
McLucas v. *DeChamplain*, 421 U.S. 21 ... 19
Mourning v. *Family Publications Service, Inc.*, 411 U.S. 356 19
North Laramie Land Co. v. *Hoffman*, 268 U.S. 276 14
Northwest Citizens for Wilderness Mining Co. v. *BLM*, No. CV 78-46-M (D. Mont. June 19, 1979) 9
Porter v. *Dep't of the Interior*, Civil No. 80-0825-N(I) (S.D. Cal. July 7, 1981)..... 9
Ram Petroleums, Inc., v. *Andrus*, 478 F. Supp. 1165, rev'd, 658 F.2d 1349 21
Rogers v. *United States*, 575 F. Supp. 4 .. 8
Schlosser v. *Pierce*, No. C81-0196B (D. Wyo. Sept. 9, 1982) 11
Texaco, Inc. v. *Short*, 454 U.S. 516 .. 13, 14, 15, 16
Topaz Beryllium Co. v. *United States*, 479 F. Supp. 309, aff'd, 649 F.2d 775 .. 3, 6, 9, 14
United States v. *California*, 332 U.S. 19... 12
United States v. *Clark*, 445 U.S. 23..... 19
United States v. *Raines*, 362 U.S. 17..... 19
United States v. *Rock Royal Cooperative, Inc.*, 307 U.S. 533 19
United States v. *San Francisco*, 310 U.S. 16 12
Usery v. *Turner Elkhorn Mining Co.*, 428 U.S. 1 ..... 17, 19
Utah Power & Light Co. v. *United States*, 243 U.S. 389 13

Cases—Continued: Page

Vlandis v. *Kline*, 412 U.S. 441 ..... 7, 16, 17, 18
Weinberger v. *Salfi*, 422 U.S. 749..... 18
Western Mining Council v. *Watt*, 643 F.2d 618, cert. denied, 454 U.S. 1031 9
Wilbur v. *United States ex rel. Krushnic*, 280 U.S. 306 21

Constitution, statutes and regulations:

U.S. Const.:
Art. IV, § 3, Cl. 2 (Property Clause) .. 12, 15
Amend. V 15, 25a
Amend. XIV 15
Common Varieties Act of 1955, 30 U.S.C. 611 ..... 2, 5
Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, 90 Stat. 2743 (codified at 43 U.S.C. (& Supp. V) 1701 *et seq.*)..... 2
§ 102(a)(2), 43 U.S.C. 1701(a)(2)..... 13
§ 203, 43 U.S.C. 1713 14
§ 314, 43 U.S.C. 1744 ..... *passim*
§ 314(a), 43 U.S.C. 1744(a) 3, 11, 25a
§ 314(b) 43 U.S.C. 1744(b)..... 3, 8, 9, 11, 15
§ 314(c) 43 U.S.C. 1744(c) 3, 8, 9, 11, 16, 19, 21, 25a
Mining in the Parks Act, § 8, 16 U.S.C. 1907 8
Act of Aug, 11, 1955, ch. 797, 69 Stat. 682, 30 U.S.C. 623 10
28 U.S.C. 1252 19
28 U.S.C. 2101(a) 8
30 U.S.C. 22 *et seq.*..... 2

Constitution, statutes and regulations—Continued: Page

30 U.S.C. 28 ..... 7, 21
30 U.S.C. (Supp. V) 181 *et seq.* 2
30 U.S.C. 188(b) 21
30 U.S.C. 188(c) 21
30 U.S.C. 193 21
43 U.S.C. 853 14
43 C.F.R.:
Section 3833.2-1(a) 4, 26a
Section 3833.4 ..... 4, 26a-27a
47 Fed. Reg. 56305 (1982) (to be codified at 43 C.F.R. 3833.0-5(m)) 4

Miscellaneous:
H.R. Rep. 94-1724, 94th Cong., 2d Sess (1976) 20
Note, *The Irrebuttable Presumption Doctrine in the Supreme Court*, 87 Harv. L. Rev. 1534 (1974) 19
Note, *Irrebuttable Presumptions: An Illusory Analysis*, 27 Stan. L. Rev. 449 (1975) 19
Public Land Law Review Commission, *One Third of the Nation's Land: A Report to the President and to the Congress* (1970) .. 2-3
S. Rep. 94-583, 94th Cong., 1st Sess. (1975) 2, 3, 20
Strauss, *Mining Claims on Public Lands: A Study of Interior Department Procedures*, 1974 Utah L. Rev. 185 3

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OPINIONS BELOW

The opinion of the district court (App., *infra*, 1a-13a) is reported at 573 F. Supp. 472. The decision of the Interior Board of Land Appeals (App., *infra*, 16a-21a) is reported at 65 I.B.L.A. 122.

JURISDICTION

The judgment of the district court (App., *infra*, 14a) was entered on October 24, 1983. A notice of appeal (App., *infra*, 15a) was filed on November 21, 1983. On January 10, 1984, Justice Rehnquist extended the time for docketing an appeal to and including February 21, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. 1252. See note 20, *infra*.

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

The relevant constitutional, statutory, and regulatory provisions are set out in App., *infra*, 25a-27a.

STATEMENT

1. The Federal Land Policy and Management Act of 1976 (FLPMA or the Act), Pub. L. No. 94-579, 90 Stat. 2743 (codified at 43 U.S.C. (& Supp. V) 1701 *et seq.*), made significant changes in the law governing federal land management. FLPMA represented a comprehensive effort by Congress to modernize public land laws and to solve a number of longstanding problems in the area of federal land policy. One of these was the lack of centralized information about the status of mining claims on federal lands.[1]

Prior to the passage of FLPMA, the existence of numerous mining claims located on federal land, combined with the absence of any general federal recording system, caused significant problems.[2] By the mid-1970s, it was estimated that there were more than 6,000,000 unpatented mining claims on public lands other than national forests; in addition, more than half of the units of the National Forest System were thought to be covered by such claims. S. Rep. 94-583, 94th Cong., 1st Sess. 65 (1975). Many of the claims were believed to be stale. *Ibid.* See also Public Land Law Review Commission,

[1] Under the general mining laws, 30 U.S.C. 22 *et seq.*, United States citizens may go on unappropriated, unreserved public lands in order to prospect for minerals. If a citizen finds valuable minerals he may mine them and eventually buy the land. Subsequent to enactment of the general mining laws, Congress removed certain minerals from their coverage. See 30 U.S.C. (Supp. V) 181 *et seq.* (oil, gas, oil shale, coal, and other energy and fertilizer minerals); 30 U.S.C. 611 *et seq.* (sand, gravel, and other building and construction minerals).

[2] Prior to 1976, most states imposed recording requirements, but there was no general federal requirement that a mining claimant record an unpatented mining claim or otherwise notify the Interior Department of the existence of the claim. In addition, the Department did not exercise any management authority over mining claim operations.

One Third of the Nation's Land: A Report to the President and to the Congress 130 (1970). However, as the Senate committee explained, because of the absence of a federal recording requirement, "Federal land managers do not have an easy way of discovering which Federal lands are subject to either valid or invalid mining claim locations." S. Rep. 94-583, *supra*, at 65. See also *One Third of the Nation's Land*, *supra*, at 124 ("land managers do not know where claims are located"); *Topaz Beryllium Co.* v. *United States*, 479 F. Supp. 309, 312 (D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1981).

The potential existence of unknown mining claims made it difficult for federal land managers to take actions affecting federal land for fear of interfering with the rights accorded to claimants under the federal mining laws. Each time the Bureau of Land Management proposed a sale of land or other conveyance, it was necessary to make a lengthy search of records in the county recorder's office and to produce a title abstract showing the existence or nonexistence of outstanding mining claims. Such searches in themselves constituted a major administrative burden. Moreover, if the county records indicated the existence of mining claims—even only stale or abandoned claims—it was necessary for BLM to initiate a mining contest to determine the validity of the claims before proceeding further with the proposed action. See Strauss, *Mining Claims on Public Lands: A Study of Interior Department Procedures*, 1974 Utah L. Rev. 185, 193, 215-219.

In Section 314 of the Act, 43 U.S.C. 1744, Congress provided the basis for a federal recordation system that serves the dual purpose of ridding federal lands of stale mining claims and providing federal managers with data that allow them to make informed land management decisions. Section 314 includes two sorts of reporting requirements. Subsection (a) requires the owner of an unpatented claim located prior to October 21,

1976, within three years of that date, and "prior to December 31, of each year thereafter," to file with BLM a notice of intention to hold the claim or an affidavit of assessment work performed on the claim. Those who locate claims after October 21, 1976, must make such filings "prior to December 31 of each year" following the calendar year in which the claim was located. The second obligation is imposed by Section 314(b): the owner of an unpatented claim located prior to October 21, 1976, must, within three years of that date, file with BLM a copy of the official record of the notice of location or certificate of location. Those who locate claims after October 21, 1976, must file the required documents within 90 days of location. In Section 314(c), Congress provided that, except in certain enumerated circumstances, the failure to file the instruments required by subsections (a) and (b) "shall be deemed conclusively to constitute an abandonment of the mining claim * * * by the owner."

The Department of the Interior has issued regulations implementing the Section 314 requirements. 43 C.F.R. 3833.2-1(a) provides that the owner of an unpatented mining claim located on federal land on or before October 21, 1976, must file evidence of annual assessment work or a notice of intention to hold the claim in the proper BLM office on or before October 22, 1979, and "on or before December 30 of each calendar year" thereafter.[3] Under 43 C.F.R. 3833.4, the failure to file

[3] Since 1982, the Department's regulations have provided that filings postmarked on or before midnight of December 30 and received by BLM by the close of business on the following January 19th will be considered timely filed. This amendment was prompted by the overload on the United States Postal Service caused by holiday mail. See 47 Fed. Reg. 56306 (1982) (to be codified at 43 C.F.R. 3833.0-5(m)). BLM informs us that the amendment appears to have resulted in an 80% decrease in untimely filings. BLM also advises us that since 1980 its practice has been to send a reminder of the filing requirements to claimants in September of each year.

a required instrument within the prescribed time period "shall be deemed conclusively to constitute an abandonment of the mining claim * * * and it shall be void."

BLM enters information from both initial filings and annual filings pursuant to Section 314 into a central computer. Every 60 days BLM prints out the information on mining claims on a state-by-state basis. The computer printouts are microfilmed and distributed to BLM State Offices, to many state governments, and to private subscribers.

2. Appellees were mining claimants whose ten unpatented claims were located on federal land in Nevada.[4] On October 19, 1979, they complied with the Section 314 initial filing requirements. However, in 1980 appellees waited until December 31 to hand deliver their affidavits of annual assessment work to the BLM Nevada State Office, thus missing the deadline set by statute and regulation. On April 4, 1981, the chief of the Records and Data Management Branch of the BLM Nevada State Office informed appellees that their claims had been declared abandoned and void because they had failed to file a notice of intent or proof of assessment work by December 30, 1980. See App., *infra*, 22a-24a. Appellees sought review of the BLM action, claiming, inter alia, that they were erroneously advised by unnamed BLM personnel as to the proper filing date and that Section 314 and the implementing regulations are unconstitutional and invalid because they resulted in taking appellees' property without notice and opportunity to be heard.

[4] Appellees located their claims in 1962 and 1965, prior to the effective date of the Common Varieties Act of 1955, 30 U.S.C. 611 *et seq.*, which withdrew common varieties of building and construction minerals from the coverage of the general mining laws.

In *June* 1982 the Interior Board of Land Appeals (IBLA) affirmed the BLM determination (App., *infra*, 16a-21a). The IBLA concluded that any reliance on erroneous information provided by a BLM employee could not relieve a claimant of an obligation imposed by statute or regulation. It declined to rule on appellees' constitutional claim on the ground that the Department of the Interior is not a proper forum to consider the constitutionality of Section 314. The IBLA noted, however, that the regulations at issue had been upheld in *Topaz Beryllium Co.* v. *United States*, 479 F. Supp. 309 (D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1981).

3. Appellees filed this action in the United States District Court for the District of Nevada, seeking review of the IBLA decision. Appellees requested, inter alia, a declaration that Section 314 is unconstitutional in that it deprived them of property without due process of law and would result in taking of their property without just compensation. Appellees also sought a permanent injunction against enforcement of the Interior Department regulations that implement Section 314.

The district court granted summary judgment for appellees, holding that Section 314 is an "unconstitutional violation of procedural due process insofar as it creates an irrebuttable presumption of abandonment for failure to timely file the annual assessment notice" (App., *infra*, 10a).[5] The court initially found that unpatented mining claims qualify as property interests sufficient to warrant due process protection (*id.* at 3a). It then concluded that Section 314 creates a forfeiture of appellees' claims, since appellees had not indicated any intent to abandon the claims (App., *infra*, 3a-4a).[6] Applying the

[5] The court did not address appellees' request for an injunction against enforcement of Interior Department regulations.

[6] During the 1979-1980 assessment year appellees produced over $1,000,000 worth of gravel and sand from their claims. App., *infra*, 2a.

analysis set out in *Vlandis* v. *Kline*, 412 U.S. 441 (1973), the district court determined that extinguishment of claims pursuant to Section 314 amounts to a taking without due process because the statute creates a conclusive presumption of abandonment that is "not necessarily or universally true in fact" (App., *infra*, 5a) and because, in the court's view, there are other reasonable methods by which BLM could establish whether a miner intends to abandon a claim when he fails to file a timely assessment work notice (*id.* at 6a-7a). The court concluded that BLM could easily determine whether claimants had in fact abandoned their claims by notifying them of their failure to meet a filing deadline and by holding a preforfeiture hearing in cases in which there is a dispute about whether abandonment has occurred (*id.* at 7a, 9a-10a).

The district court went on to hold (App., *infra*, 10a-12a) that even if appellees had not been deprived of their due process rights, they would still prevail because they had substantially complied with Section 314 by submitting the required notices one day after the statutory deadline. In the court's view, the primary purpose of Section 314 is to clear federal lands of stale claims, which is accomplished by requiring the initial filing of location notices; the requirement of annual filings thereafter is intended to facilitate maintenance of a current index of unpatented claims "merely for the convenience of federal land managers" (App., *infra*, 11a). Thus, according to the court, a standard of substantial compliance with the annual filing deadline would be consistent with the history and purpose of Section 314 (App., *infra*, 12a). In addition, the court, citing *Hickel* v. *Oil Shale Corp.*, 400 U.S. 48, 57 (1970), and earlier cases for the proposition that substantial compliance satisfies the assessment work requirement under 30 U.S.C. 28, reasoned that it would be anomalous for the government to insist on strict compliance with Section

314 when, at the same time, substantial compliance is sufficient under 30 U.S.C. 28. App., *infra*, 12a.

THE QUESTIONS ARE SUBSTANTIAL

1. The decision of the district court holds unconstitutional an important feature of the scheme for administration of federal lands that Congress mandated under the Federal Land Policy and Management Act of 1976. Section 314 of the Act, 43 U.S.C. 1744, provides the basis for a federal recordation system for unpatented mining claims located on federal land. It sets out specific reporting requirements for mining claimants, with precise filing deadlines. In Section 314(c) Congress conditioned retention of a mining claim located on federal land on compliance with the statutory filing requirements, thereby creating an enforcement mechanism that would assure both elimination of stale claims and maintenance of centralized, comprehensive, and up-to-date information on the status of claims. The decision below prevents uniform administration of the federal recordation system and undermines seriously the administrative workability of the system in Nevada.[9] In addition, the decision casts doubt on the status of thousands of mining claims the Department of the Interior

[9] BLM faces similar problems in Montana, where a federal court has declared Section 314(c) unconstitutional in a case involving invalidation of claims based on failure to file timely notices of location, as required by Section 314(b). *Rogers* v. *United States*, 575 F. Supp. 4 (D. Mont. 1982). The court in *Rogers* applied an irrebuttable presumption analysis similar to that employed by the district court in this case. The government did not seek review of the judgment in *Rogers* because it failed to file a notice of appeal to this Court within the 30-day time limit set by 28 U.S.C. 2101(a).

The decision below may also call into question the recordation provisions of the Mining in the Parks Act. Section 8 of that Act, 16 U.S.C. 1907, declares that mining claims that are not recorded within one year after September 28, 1976, are "conclusively presumed to be abandoned and shall be void."

previously had adjudicated to be invalid based on the failure of claimants to make timely annual filings. This Court should grant review to remove the cloud placed on the validity of this important feature of the federal land management program.[8]

The decision below prevents BLM from administering a nationwide reporting program on a uniform basis. In Nevada (and apparently in Montana, see note 7, *supra*), BLM must at least set up new procedures in response to the decision below; and perhaps it will be forced to abandon any effort to enforce the Section 314 filing requirements in those states. The information (if any) gathered in those states presumably will not be comparable to data collected in other states. These results are inconsistent with the intent of Congress, which sought to create a centralized and up-to-date system that would permit determination of the status of

[8] Section 314 has already spawned considerable litigation. Thus far, the court below and the federal district court in Montana (see note 7, *supra*) have held Section 314(c) unconstitutional on the ground that it creates an impermissible irrebuttable presumption of abandonment. One state court has upheld Section 314(c) against a procedural due process challenge in a suit between private parties. *See Aubert* v. *Fahey Group Mines, Inc.*, No. 24051 (1st Jud. Dist. Idaho Mar. 4, 1983), slip op. 9-14. The Ninth Circuit has rejected a facial due process challenge to Section 314, although it reserved certain due process issues that might arise in connection with application or enforcement of Section 314 in given factual situations. *Western Mining Council* v. *Watt*, 643 F.2d 618, 627-630 & n.18, cert. denied, 454 U.S. 1031 (1981). See also *Topaz Beryllium Co.* v. *United States*, 479 F. Supp. 309 (D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1981) (upholding Interior Department regulations implementing Section 314 as a proper exercise of statutory authority); *Northwest Citizens for Wilderness Mining Co.* v. *BLM*, No. CV 79-46-M (D. Mont. June 19, 1979) (rejecting challenge to BLM's refusal to accept untimely location notices required by Section 314(b)); *Foster* v. *Dep't of the Interior*, Civil No. 80-0825-N(I) (S.D. Cal. July 7, 1981).

mining claims on any federal land at any given time. Moreover, the failure to make a timely filing now has different consequences in different states: in Nevada (and perhaps in Montana), a claimant's failure to file an annual assessment work notice or notice of intention to retain a claim will have no consequence, while such a failure will result in invalidation of the claim in other states.

The decision below creates serious difficulties for the future administration of the Section 314 filing requirements in Nevada. The decision effectively deprives BLM of any sanction for a claimant's failure to comply with the filing requirements; if claimants know they will not lose their claims if they miss a statutory deadline, they will have little incentive to meet the deadlines, or even to make filings at all.[9] The result presumably will be a return in Nevada to the situation that existed prior to passage of Section 314, in which it was necessary for federal land managers to undertake burdensome title searches, notification, and adjudication when they wished to take actions involving federal lands.[10]

The decision below calls into question thousands of determinations previously made by the Interior De-

[9] Prior to the enactment of Section 314, there were several statutory recording requirements applicable to special situations. See, *e.g.*, Act of Aug. 11, 1955, ch. 797, 69 Stat. 682, 30 U.S.C. 623 (requiring recordation and reporting for claims on lands withdrawn for power site development). Because no penalty for noncompliance was provided in the statute (see *MacDonald* v. *Best*, 186 F. Supp. 217 (N.D. Cal. 1960)), BLM rarely received the filings required.

[10] Private subscribers to the BLM data base also will be deprived of a useful source of information concerning the status of mining claims on federal land in Nevada. We are informed by BLM that private subscribers use the information from Section 314 filings to assist in determining whether particular federal lands are available for location of claims.

partment. Pursuant to Section 314, BLM has adjudicated an estimated 40,000 claims on federal land in Nevada to be invalid following claimants' failure to make a timely annual filing.[11] If the decision below were applied retroactively, BLM might be required to rescind those adjudications. Such action in turn would cast doubt on actions federal managers may have taken with respect to the land in question; in addition, it would create obvious problems in cases in which a later claimant has obtained rights in the same land (*e.g.*, by "topfiling") in reliance on the prior claimant's failure to adhere to the Section 314 requirements.[12]

[11] BLM advises us that from fiscal year 1977 through fiscal year 1983, it "closed" (*i.e.*, adjudicated to be invalid) 48,249 mining claims on federal land in Nevada. BLM is unable to provide a precise breakdown that shows how many claims were closed because of a claimant's failure to make a timely annual filing (as opposed to, *e.g.*, failure to file a notice of location required by Section 314(b) before the statutory deadline, or failure to provide correct documentation in connection with a filing). However, BLM estimates that a very high percentage of the closed cases were attributable to the failure of claimants to make a timely annual filing.

Assuming the *Rogers* decision (see note 7, *supra*) would affect cases involving failure to make timely annual filings under Section 314(a), as well as failure to file an initial notice of location under Section 314(b), approximately 15,000 closed cases involving claims on federal lands in Montana also would be affected.

[12] In several cases involving litigation between competing private claimants, courts have applied Section 314(c) to determine the validity of a claim. See *Schlosser* v. *Pierce*, No. C81-0196B (D. Wyo. Sept. 9, 1982); *Aubert* v. *Fahey Group Mines, Inc.*, *supra*.

Depending on how much of the statute were held severable, the decision below might allow BLM to readjudicate the status of previously invalidated claims by notifying claimants of their failure to make a timely annual filing and by holding hearings to determine whether a claimant had abandoned his claim at the time he missed the filing deadline. Assuming such an approach

2. The district court decision is erroneous. Congress clearly has authority to prescribe reasonable conditions for retention of unpatented mining claims located on federal lands. Moreover, Congress's decision to condition retention of such claims on a claimant's compliance with the filing requirements of Section 314 is fully consistent with the requirements of due process.

a. The power of Congress to manage and control the mineral resources of the public domain is very broad. The Property Clause of the Constitution, Art. IV, § 3, Cl. 2, provides that "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." This court has repeatedly stated that "'[t]he power over the public land thus entrusted to Congress is without limitations.'" *Kleppe* v. *New Mexico*, 426 U.S. 529, 539 (1976) (quoting *United States* v. *San Francisco*, 310 U.S. 16, 29 (1940)). See also *Ivanhoe Irrig. Dist.* v. *McCracken*, 357 U.S. 275, 294-295 (1958); *Alabama* v. *Texas*, 347 U.S. 272, 273 (1954); *FPC* v. *Idaho Power Co.*, 344 U.S. 17, 21 (1952); *United States* v. *California*, 332 U.S. 19, 27 (1947); *Gibson* v. *Chouteau*, 80 U.S. (13 Wall.) 92, 99 (1872). The Property Clause gives Congress the power over public lands "'to control their occupancy and use, to protect them from trespass and injury and to prescribe the conditions upon which others may obtain rights in them.'" *Kleppe* v. *New Mexico*, 426 U.S. at

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were permissible, it would result in an enormous burden on BLM, which probably would have to spend years resolving the backlog. The system of claim-by-claim notification and hearings would be equally unworkable for future cases. Indeed, there would be little point in attempting to set up the sorts of procedures envisioned by the court below, since they would be quite similar to the mining contest procedures already available under the general mining laws.

540 (quoting *Utah Power & Light Co.* v. *United States*, 243 U.S. 389, 405 (1917)).

This extensive power is clearly broad enough to encompass Section 314, which conditions retention of unpatented mining claims on a claimant's compliance with the filing deadlines set out in that section. Indeed, the Court has held that state governments, in legislating with respect to privately held land, have the power "to condition the retention of a property right upon the performance of an act within a limited period of time." *Texaco, Inc.* v. *Short*, 454 U.S. 516, 529 (1982). *A fortiori*, imposition of such a condition is within the power of Congress over the public domain.

Moreover, conditioning retention of unpatented mining claims on the filing of annual notices is fully consistent with due process requirements. Such a condition is both reasonable and necessary to accomplishment of Congress's objectives in enacting Section 314. The congressional declaration of policy set out in FLPMA states that "the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal and State planning efforts." 43 U.S.C. 1701(a)(2). As we explained above (at pages 2-4), Congress's purpose in enacting Section 314 was twofold; it wished to rid federal lands of stale mining claims and also to provide for centralized collection of comprehensive and up-to-date information on the status of mining claims on federal lands, so that federal managers could make informed and efficient decisions about the disposition of federal lands, without the heavy administrative burden of time-consuming title searches in county courthouses.[13] Invalidation of claims

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[13] BLM informs us that the Section 314 filing requirements have indeed facilitated actions involving federal lands. For example, the State of Utah recently selected 223,000 acres pursu-

based on failure to comply with filing requirements serves both these purposes. On the one hand, it provides the mechanism for terminating stale claims. But it also provides the only reliable tool for enforcement of the filing requirements and thus is essential to an "accurate and perpetual inventory of mining claims on the public lands and of those persons who assert an interest in [such] claims." *Topaz Beryllium Co.* v. *United States*, 479 F. Supp. 309, 314 (D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1981).

The statute itself provides notice to claimants of the consequences of failure to make timely filings. *Texaco* v. *Short*, 454 U.S. at 532; *FCIC* v. *Merrill*, 332 U.S. 380, 384-385 (1947); *Anderson National Bank* v. *Luckett*, 321 U.S. 233, 243 (1944); *North Laramie Land Co.* v. *Hoffman*, 268 U.S. 276, 283 (1925). Indeed, under the terms of Section 314, claimants were allowed a three-year grace period within which to become familiar with the filing requirements—more generous than

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ant to the indemnity selection program under 43 U.S.C. 853. In the course of a month, BLM was able to use the data base generated with the aid of Section 314 filings to identify 32,000 of those acres as covered by valid mining claims; that information was then used in reaching an agreement on acreage available for the State's indemnity selection. BLM estimates that prior to passage of Section 314, it would have taken four months of research at county courthouses, an additional 60 days for publication in the Federal Register and local newspapers, and perhaps several years for validity examinations and mining contest hearings in order to accomplish a similar result. The centralized data base thus saved BLM and the State of Utah a significant amount of time and labor.

Thus far, the major benefits of the Section 314 recordation program have been in the area of land conveyance and disposal of isolated, unmanageable tracts pursuant to Section 203 of the FLPMA, 43 U.S.C. 1713. Information generated by the program has also aided in the demarcation of active mineral exploration areas, which in turn facilitates the planning of new areas of mining and industrial activity on public lands.

the two-year grace period provided under the lapse provision of the Indiana recordation statute found to be consistent with due process in *Texaco* v. *Short*, *supra*.

Due process does not require individualized notice to claimants that they risk invalidation of their claims if they do not meet the statutory filing deadlines.[14] This Court held in *Texaco* v. *Short* that the Indiana legislature could, consistently with the requirements of due process, provide for lapse of vested mineral interests in private lands following a 20-year period of nonuse and the owner's failure to file a statement of claim within a two-year period, without individualized preforfeiture notice.[15] *A fortiori*, due process does not require individualized notice in connection with appellees' inchoate

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[14] In fact, BLM's practice has been to send out annual reminder notices to claimants several months before the filing deadline. See note 3, *supra*. There can be no question in this case that appellees were aware of the filing requirements under Section 314. Appellees made the initial filing of their notices of location, required by Section 314(b), several days before the statutory deadline in 1979. See page 5, *supra*. In addition, they were obviously aware that the statute requires annual filings, since they in fact made their 1980 filing the day after it was due.

[15] As the Court noted in *Texaco*, 454 U.S. at 536, a claim that absence of specific notice rendered ineffective the self-executing feature of the Indiana statute "has no greater force than a claim that a self-executing statute of limitations is unconstitutional."

The Court in *Texaco* also made clear that a statute under which property is deemed to be abandoned upon the owner's failure to take reasonable actions imposed by law is not a "taking" that requires just compensation under the Fifth and Fourteenth Amendments. See 454 U.S. at 530. There is no "taking," because it is the owner's failure to take the required action, rather than the action of the government, that directly causes extinguishment of the property right. Thus, the district court here erred in characterizing Section 314 as resulting in a "taking" of appellees' property (see App., *infra*, 4a).

mining claims located on public lands.[16] Nor is a preforfeiture hearing required by due process in this context. Under Section 314, the only relevant issue is whether or not the claimant filed an annual notice that complies with the statutory requirements. A preforfeiture hearing would be of little use, since the facts that bear on that issue are a matter of public record.[17]

b. Despite the apparent consistency of Section 314 with the requirements of due process, the district court concluded (App., *infra*, 5a-10a) that Section 314(c) is unconstitutional on the ground that it creates an impermissible irrebuttable presumption of abandonment, citing *Vlandis* v. *Kline*, 412 U.S. 441 (1973). In fact, the irrebuttable presumption analysis of *Vlandis* has no application to this case.

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[16] Section 314 differs from the Indiana statute at issue in *Texaco* in that extinguishment of a mining claim under Section 314(c) does not depend in any way on nonuse, but only on failure to comply with the statutory filing requirements. However, that distinction is related to the differing purposes of the two statutes. The Indiana statute was designed to encourage use of private lands, while Section 314 has the dual objectives of clearing stale claims from federal lands and providing for the collection of centralized and up-to-date information about mining claims. Cf. *Texaco* v. *Short*, 454 U.S. at 536 n.28 (declining to reach the question whether a state could indulge in an assumption of abandonment if the statutory period of nonuse were shorter than 20 years or if "the interest affected is such that concepts of 'use' or 'nonuse' have little meaning").

[17] Compare *Cameron* v. *United States*, 252 U.S. 450, 460 (1920), in which the Court noted that the government could nullify an unpatented mining claim after proper notice and an administrative hearing. Presumably the relevant issues in that pre-FLPMA case—whether there had been a mineral discovery within the limits of the claim, whether the land was mineral in character, and whether other requirements of the general mining laws had been met (*id.* at 456)—could best be determined in a hearing.

In *Vlandis* the Court considered Connecticut's practice of charging higher tuition to students who were not bona fide residents while denying to individuals who previously lived outside the state any opportunity to establish that they had become bona fide residents. The Court held that Connecticut's irrebuttable presumption of nonresidence violated due process because the presumption was not necessarily or universally true in fact and because the State had reasonable alternative means of determining bona fide residence.

In this case, the district court concluded that Section 314 creates a conclusive presumption of abandonment that is not necessarily or universally true in fact (since failure to make a timely filing under Section 314 does not always signify intent to abandon a claim) and that there are reasonable alternative means of determining whether a claimant in fact has abandoned a claim (*e.g.*, by individual notice and a preforfeiture hearing). But the district court erred in focusing on abandonment and intent to abandon. Although Congress used the term "abandoned" in Section 314, it did not make invalidation of a claim turn on abandonment or intent to abandon, but solely on whether the claimant has met the statutory filing requirements.[18]

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[18] Of course, Congress's choice of statutory language cannot invalidate a provision if its operation and effect are otherwise permissible. *See Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 23-24 (1976). Here the context makes it clear that Congress did not use the term "abandoned" in its common law sense; instead, Congress in effect provided that failure to file the required instruments would result in extinguishment of a mining claim.

Section 314 does not present the sort of dilemma that appeared to exist in *Vlandis* v. *Kline*. Congress did not establish abandonment as the statutory standard, but at the same time preclude introduction of evidence relating to that issue; rather, it simply required that a claimant file an annual notice before December 31 in order to retain his claim. That condition is not

The district court also misapplied the second prong of the *Vlandis* analysis in suggesting that BLM has reasonable alternative means of determining whether a claimant intends to abandon his claim. Since loss of a claim does not turn on intent to abandon under the statutory scheme, notice and an opportunity to prove nonabandonment are unnecessary. Even if such procedures were useful, they would hardly be "reasonable," since they would impose a significant administrative burden on BLM. Use of preforfeiture notice and hearing procedures would require BLM to return to the sort of claim-by-claim investigation it was forced to use before enactment of Section 314. In addition, mandatory use of such procedures would deprive BLM of any effective way to enforce the filing requirements, since claimants who know they do not risk automatic loss of their claims presumably will wait to file the necessary documents until they receive notices of their failure to file or perhaps until hearings are scheduled. As a result, BLM could be required to send annual follow-up notices and to schedule hearings in connection with a total of more than one million claims nationwide in order to ensure receipt of information on the status of claims—a procedure that would defeat the legislative purpose underlying Section 314.[19]

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impossible or burdensome to meet; indeed, the vast majority of claimants succeed in meeting it each year. Cf. *Weinberger* v. *Salfi*, 422 U.S. 749, 772 (1975).

[19] This Court's decisions indicate that application of the *Vlandis* v. *Kline* analysis is inappropriate in the case of otherwise reasonable legislative regulatory measures. In particular, in *Weinberger* v. *Salfi*, *supra*, the Court declined to apply the *Vlandis* analysis to a statute that established time limits for assertion or protection of rights under the Social Security Act. The Court explained (422 U.S. at 773) that a court should not second-guess the legislature about "whether such a flat cutoff provision was necessary to protect the Secretary from stale claims, whether it would be possible to make individualized determinations as to any prejudice suffered by the Secretary as the result of an untimely filing, and whether or not an individualized hearing on that issue would be required in each case." See also *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. at 22-24; *Mourning* v. *Family Publications Service, Inc.*, 411 U.S. 356, 377 (1973). And see Note, *Irrebuttable Presumptions: An Illusory Analysis*, 27 Stan. L. Rev. 449, 472-473 (1975); Note, *The Irrebuttable Presumption Doctrine in the Supreme Court*, 87 Harv. L. Rev. 1534, 1556 (1974).

3. The district court also erred in its alternative holding (App., *infra*, 10a-12a) that appellees substantially complied with the requirements of Section 314 by filing their annual notices one day late.[20] The statute on its face indicates that (except in certain enumerated circumstances)[21] any failure to comply with the statutory filing requirements will result in loss of a mining claim. Neither the language nor the legislative history of Section 314 suggests that some form of "substantial compliance" with the filing deadlines would suffice to preserve

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[20] Because the district court concluded that appellees could prevail on a nonconstitutional ground, it should not have reached the constitutional issue. See, *e.g.*, *United States* v. *Clark*, 445 U.S. 23, 27 (1980). Nevertheless, the district court did decide the constitutional question and in fact gave that issue the prominent position in its opinion. The constitutional holding presumably will be applied in future cases arising in the District of Nevada. The fact that the district court cited an alternative ground for its judgment does not affect this Court's jurisdiction under 28 U.S.C. 1252. See *United States* v. *Rock Royal Cooperative, Inc.*, 307 U.S. 533, 541 (1939). Cf. *McLucas* v. *DeChamplain*, 421 U.S. 21, 31 (1975); *United States* v. *Raines*, 362 U.S. 17, 20 (1960).

[21] Section 314(c) provides that "it shall not be considered a failure to file if the instrument is defective or not timely filed for record under other Federal laws permitting filing or recording thereof, or if the instrument is filed for record by or on behalf of some but not all of the owners of the mining claim or mill or tunnel site."

a claim or that the Secretary has discretion to waive the deadlines.[23]

Construction of Section 314 to permit substantial compliance would be inconsistent with Congress's goal of enabling BLM to obtain complete and up-to-date information on the status of mining claims on federal lands. It may well be that the system Congress envisioned could function properly even if every claimant filed one day after the statutory deadline. But the principle of substantial compliance presumably is not limited to such short delays; thus, its application eventually would make a significant difference in the speed with which BLM could collect and tabulate information on mining claims. Moreover, the court's failure to define the boundaries of its substantial compliance principle leaves BLM with the unwelcome task of providing some content for the term. Is BLM to allow a 20-day grace period? A one-month grace period? A one-year grace period? Of course, no matter what grace period BLM chose, there would always be a claimant who filed a day or two after its expiration. And if BLM could not establish a clear cut-off point, it would be required to make case-by-case determinations that presumably could be challenged by disappointed claimants who dispute BLM's judgment about what compliance is "substantial." There is no indication that Congress intended to impose such administrative burdens on BLM.[23]

[23] The district court cited the Senate Report (S. Rep. 94-583, 94th Cong., 2d Sess. 65 (1975)) for the proposition that Congress was primarily interested in the elimination of stale claims when it enacted Section 314. App., *infra*, 8a-9a. But the Senate bill did not include the annual filing requirement; instead, it required that a claimant make an initial recordation and proceed to patent within ten years in order to retain a claim. The Conference Committee rejected the approach of the Senate bill and instead adopted the House amendments, which contained the annual filing requirement. H.R. Rep. 94-1724, 94th Cong., 2d Sess. 62 (1976). Thus, the comments in the Senate Report do not reflect the legislative purpose underlying the annual filing requirement.

The district court relied on *Hickel* v. *Oil Shale Corp.*, 400 U.S. 48, 57 (1970), and earlier cases[24] in which this Court stated that substantial compliance is sufficient to meet the annual assessment work requirement of the general mining law, 30 U.S.C. 28. But those decisions do not control the present case. In enacting Section 314, Congress added to the conditions for retention of unpatented mining claims in order to eliminate the situation that had prevailed under the general mining law. Under Section 314, retention of a claim is based not on performance of assessment work, but on filing of particular documents. Section 314(c) expressly provides that failure to meet the filing requirements "shall be deemed conclusively" to constitute abandonment of the claim; in contrast, the saving clause at issue in *Hickel* v. *Oil Shale Corp.* and the other pre-FLPMA cases cited by the district court provides only that a claim must be "maintained in compliance with the laws under which initiated" (30 U.S.C. 193) in order to avoid leasing requirements. Thus, those cases are clearly dis-

[23] Congress is quite capable of establishing a grace period when it wishes to do so. Under 30 U.S.C. 188(b), Congress has provided that certain oil and gas leases will terminate automatically upon failure to make annual rental payments on or before the anniversary date of the lease. However, Congress also provided that the Secretary may reinstate the lease if the lessee pays or tenders the annual fee within 20 days of the anniversary date and if it can show that the failure to make a timely payment was justifiable or not due to a lack of reasonable diligence. 30 U.S.C. 188(c). *See Rom Petroleums, Inc.* v. *Andrus*, 478 F. Supp. 1165 (D. Nev. 1979), rev'd, 668 F.2d 1349, 1353 (9th Cir. 1981). There is no comparable provision in Section 314.

[24] *Ickes* v. *Virginia-Colorado Development Corp.*, 295 U.S. 639 (1935); *Wilbur* v. *United States ex rel. Krushnic*, 280 U.S. 306 (1930).

tinguishable and do not mandate any departure from the plain language of Section 314.

CONCLUSION

Probable jurisdiction should be noted.

Respectfully submitted.

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FEBRUARY 1984

APPENDIX A

In THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Civil R-82-297 BRT

MADISON D. LOCKE, ROSALIE E. LOCKE, SAM BUCCAMBUSO, AND TONY BUCCAMBUSO, PLAINTIFFS,

vs.

UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF THE INTERIOR, JAMES WATT, SECRETARY OF THE INTERIOR, BUREAU OF LAND MANAGEMENT AND ROBERT T. BURFORD, DIRECTOR OF THE BUREAU OF LAND MANAGEMENT, DEFENDANTS.

[Entered: Oct. 21, 1983]

ORDER GRANTING SUMMARY JUDGMENT

The primary issue raised by the parties' cross-motions for summary judgment is the constitutionality of 43 U.S.C. § 1744(a) and (c). This statute creates an irrebuttable presumption that mining claims are abandoned if the miner fails to timely file an annual proof of labor (assessment notice). After careful consideration, we conclude that this statute violates the due process clause of the Fifth Amendment. In addition, we conclude that the plaintiffs here have substantially complied with the statute regardless of its constitutionality.

Plaintiffs, Madison and Rosalie Locke, et al. (Lockes), are owners of ten unpatented mining claims from which they produce gravel and building materials. These claims are located in the state of Nevada on public land belonging to the United States Government.

The Lockes have successfully earned their livelihood by mining these claims since 1960. During that period these claims have produced approximately $4,000,000 in materials, with over $1,000,000 of that being produced during the 1979-1980 assessment year.

In 1976, the United States enacted the Federal Land Policy and Management Act, Pub. L. No. 94-579, 90 Stat. 2743 (codified at 43 U.S.C. §§ 1701-82) (FLPMA) which required the Lockes to register their unpatented claims with the Bureau of Land Management (BLM) by October 21, 1979. They complied fully with this initial filing requirement on October 19, 1979. Each calendar year thereafter, FLPMA further requires a filing of the assessment notice (showing that $100 worth of labor has been performed on the claim during the assessment year) "prior to" December 31. 43 U.S.C. § 1744(a). It is this provision which creates the controversy here.

In an effort to comply fully with this provision, the Lockes sent their daughter, who was working in their business office, to the Ely office of the BLM. There she inquired as to the procedure for filing the assessment notice. She was told that the documents should be filed at the Reno BLM office "on or before December 31, 1980." Affidavit of Laura C. Locke, August 28, 1981, para. 3. (The identity of the federal employee who allegedly gave this advice is unknown. Therefore, we place no reliance on the advice. The uncontradicted evidence of the inquiry is, nevertheless, evidence of lack of intent to abandon). The Lockes then chose to hand-deliver the documents to assure their delivery and, on December 31, 1980, the assessment notices were filed at the Reno BLM office.

On April 4, 1981, the Lockes received notice that their mining claims were declared "abandoned and void" for failure to comply with 43 CFR § 3833.2-1 (the BLM's regulation promulgated under 43 U.S.C. § 1744 which requires filing the assessment notices "on or before December 30" of each calendar year. 43 CFR

§ 3833.2-1(a) (1982)). On May 1, 1981, they appealed the declaration of abandonment to the Interior Board of Land Appeals (IBLA). That body ruled on June 25, 1982 that the Lockes had missed the December 30, 1980 deadline and thus their claims were forfeited. The IBLA refused to address the Lockes' constitutional arguments. They then instituted this action to challenge the constitutionality of 43 U.S.C. § 1744 as depriving them of procedural due process under the Fifth Amendment.

In order to establish a deprivation of their due process rights, the Lockes must first show that the laws creating these rights give rise to a "legitimate claim of entitlement." *Memphis Light, Gas and Water District v. Craft*, 436 U.S. 1, 12 (1978). The Supreme Court has held that unpatented mining claims are a possessory mineral interest in land, as well as "property in the fullest sense of that term." *Wilbur v. United States ex rel. Krushnic*, 280 U.S. 306, 317 (1930); *see also, Best v. Humboldt Mining Co.*, 371 U.S. 334, 335 (1963). Similarly, the Ninth Circuit Court of Appeals recently concluded that the holder of an unpatented mining claim has a property right: "[b]ecause an unpatented mining claim is a unique form of property which created in the owners a possessory interest in the land, the loss of such an interest would constitute a substantial injury." *Western Mining Council v. Watt*, 643 F.2d 1618, 628 (1981) (citations omitted). Thus, there can be little doubt that the Lockes' unpatented claims rise to the level of a property interest sufficient to warrant due process protection.

The Lockes contend that the language of 43 U.S.C. § 1744, establishing conclusively that they have abandoned their claims, is tantamount to declaring a forfeiture of their claims. They note that, although the BLM has recommended that they relocate their claims, it is uncontroverted that they are precluded from doing so

by 30 U.S.C. § 611, the so-called "Common Varieties Act." Thus, they are prevented from mining their old claims and at the same time from relocating the claims.

The government, however, contends that the term "abandonment" in the statute is not the same as "forfeiture," and thus an extinguishment of the Lockes' rights does not occur merely by operation of the presumption. This reasoning is not persuasive. The American Law of Mining distinguishes between abandonment and forfeiture in Section 8.2 of Volume 2 by stating:

> Although there is a clear distinction between abandonment and forfeiture, the terms are frequently used as though they were interchangeable. The resulting confusion is compounded by statutes which provide that certain acts, unaccompanied by the requisite intent, shall constitute an abandonment.... To show abandonment, the intent of the claimant must be determined; to show forfeiture, only noncompliance with the requirements of law must be shown.

2 Rocky Mountain Mineral Law Foundation, *The American Law of Mining* 195-96 (1981) (footnotes omitted).

The statute creates a forfeiture of plaintiffs' rights in the mining claims since they at no time evidenced an intent to abandon those claims. This forfeiture extinguishes their previously valid interests and results in a taking of their property sufficient to trigger the due process protections of the Fifth Amendment.

After establishing the existence and loss of their rights in the subject claims, we turn to what quality of procedural process is "due" the Lockes before their property rights may be extinguished. Some guidance in this regard can be drawn from the law prior to the passage of FLPMA. In 1920, the Supreme Court ruled that the holder of an unpatented mining claim possesses a property right worthy of strong due process protections:

> [o]f course, the land department [BLM] has no power to strike down a claim arbitrarily, but so long as the legal title remains in the government it does have power, *after proper notice and upon adequate hearing*, to determine whether the claim is valid and, if it be found invalid, to declare it null and void.

Cameron v. United States, 252 U.S. 450, 460 (1929) (emphasis added). Thus, pre-FLPMA miners were entitled at the least to notice and a hearing prior to forfeiture of their claims.

In determining which procedural safeguards must be afforded post-FLPMA miners, this Court would normally consider the extent to which they might suffer grievous loss, the nature of the governmental function involved, and the nature of the private interest affected. *Morrissey v. Brewer*, 408 U.SA. 471, 481-82 (1972). But, where the statute in question creates an irrebuttable presumption, we must instead look to the nature of that presumption before balancing these factors. *Vlandis v. Kline*, 412 U.S. 441, 452 (1973). The Supreme Court in *Vlandis v. Kline* established a two-prong test for the presumption analysis. *Id.* If " 'the presumption is not necessarily *or* universally true in fact' and the government has available 'reasonable alternative means of making the crucial determination,' " then due process demands a hearing to rebut the presumption. *Rogers v. United States*, No. 80-114, slip op. at 10 (D.Mont. June 28, 1982) (quoting *Vlandis v. Kline*, *supra*, 412 U.S. at 452); *see also*, *Stanley v. Illinois*, 405 U.S. 645, 658 (1972) (due process hearing required to rebut conclusive presumption that unmarried father was unfit as a parent since this presumption not universally true).

The present case perfectly illustrates a presumption that is not necessarily or universally true in fact. The Lockes mined over $1,000,000 worth of materials from their "abandoned" mines during the 1979-80 assessment

year. They filed proofs of annual labor with the White Pine County Recorder on August 26, 1980. They filed the proper documents at the Reno office of the BLM on December 31, 1980, one day after the December 30, 1980 deadline. It would be absurd in light of these facts to conclude that the Lockes intended to abandon their claims. Thus, they have met the first prong of the *Vlandis* test.

The second prong of the *Vlandis* test concerns the government's ability to make a reasonable determination of whether the fact(s) presumed actually exist. At the outset we note the government's argument that the Supreme Court case of *Weinberger v. Salfi*, 422 U.S. 749 (1974), would deny the Lockes a prior hearing to rebut the conclusive presumption of abandonment. Although at first blush the *Salfi* case may appear to contradict *Vlandis*, there is a clear basis for distinguishing the two.

In *Vlandis*, a student whose address was listed as out of state during the year preceding his enrollment in a Connecticut state university was conclusively presumed to be a non-resident. This presumption continued for as long as the student attended Connecticut schools, resulting in a higher tuition for that student throughout his academic career. *Vlandis v. Kline*, *supra*, 412 U.S. at 442-44. A rather simple determination of the actual residency of each student would have been feasible. *Id.* at 451-52.

Conversely, in *Salfi*, the presumption was that a marriage was a "sham" for Social Security purposes if entered into within nine months prior to the death of one spouse. This presumption operated to deprive surviving spouses of Social Security payments they would have received had the marriage occurred ten months prior to death. The court upheld the presumption and ruled that no prior hearing was required to rebut it. Writing for the court, Justice Rehnquist noted that, al-

though the statute undoubtedly excluded some deserving claimants, "[it is not] at all clear that individual determinations could effectively filter out sham arrangements, since neither marital intent, life expectancy, nor knowledge of terminal illness has been shown by appellees to be reliably determinable." *Salfi*, *supra*, 422 U.S. at 782-83 (footnote omitted). Thus, a prior hearing could not have reasonably determined the fact presumed in *Salfi*.

The facts of the present case more closely resemble those of *Vlandis*, where individual determinations were clearly possible. Unlike the *Salfi* case, this objective requirement is easily determinable at a hearing. In addition, we agree with the Montana district court that such a hearing would not be overly burdensome to the BLM. *Rogers v. United States*, *supra*, No. 80-14, slip. op. at 10-11. "[I]t is not asking too much of the government to provide the holder of property in the form of an unpatented mining claim a hearing before the BLM upon whether he has abandoned his mining claim." *Id.*

We therefore conclude that the second prong of *Vlandis*, the existence of a reasonable alternative means of making the factual determination, is likewise met in this case. Since the Lockes satisfy both parts of the *Vlandis* test, it follows that they are entitled to a pre-forfeiture hearing. *Vlandis v. Kline*, *supra*, 412 U.S. at 452.

In agreeing with the *Rogers* case concerning procedural due process, however, we note that *Rogers* dealt with the initial filing requirement of 43 U.S.C. § 1744 instead of the subsequent annual filings at issue here. This important distinction, which strengthens the Lockes' right to a hearing, is highlighted by the legislative history of Section 1744 and the Act of which it is a part.

The mining provisions of FLPMA trace their original roots to a report prepared in 1970 by the Public Land

Law Review Commission (PLLRC). The PLLRC report established the need for a uniform system of mining claim recordation. "The General Mining Law currently requires compliance with location and discovery requirements of state law. State laws on this subject vary widely and many are obsolete or archaic in light of modern technology." PLLRC, *One Third the Nation's Land* at 130 (1970). The purpose for establishing this new uniform system was to clear abandoned claims from public lands. "Congress should establish a fair notice procedure (a) to clear the public lands of long-dormant mining claims. . . . Clearing the record of an estimated 5.5 million long-dormant claims would assist in achieving more efficient land planning and management by Federal agencies." *Id.*

The recommendations of the PLLRC were later incorporated in Senate Bill 507 (94th Cong., 2nd Sess.), which finally was amended and passed as FLPMA. The Senate report from the Committee on Interior and Insular Affairs regarding S 507 further demonstrates that the purpose of 43 U.S.C. § 1744 was to clear long-dormant claims:

> [T]he Committee did address a particular procedural problem concerning the registration of mining claims—a problem which is particularly frustrating to the public land manager. The source of this problem is what is often termed "stale claims". There is no provision in the 1872 Mining Law, as amended, requiring notice to the Federal government by a mining claimant of the location of this claim. The mining law only requires compliance with local recording requirements, which usually means simply an entry in the general county land records. Consequently, Federal land managers do not have an easy way of discovering which Federal lands are subject to either valid or invalid mining claim locations. According to some estimates, there are presently more than 6,000,000 unpatented

> claims on the public lands, excluding national forests, and more than half of the units of the National Forest System are reputedly covered by mining claims. Of course, the vast majority of these claims will never be pursued, and do not directly interfere with land management. They do, however, create significant uncertainty regarding the actual extent of valid locations.

S.Rep. No. 94-583, 94th Cong., 2nd Sess. 65 (1975) (footnote omitted).

In order to clear these abandoned claims, Congress used the conclusive presumption of 43 U.S.C. § 1744, since giving notice to individual miners would have involved the awesome task of searching every local title record.

In this case, the initial filing has occurred. There is no longer a burden on the government to ascertain the identity of the miner since they already have a file with his name on it. An inquiry as to whether the miner intends to abandon his claim could easily occur by letter. In fact, the BLM presently notifies by mail each miner failing to file the annual assessment notice that their claim has been declared "abandoned and void." Why then would it be more difficult to notify them that they have failed to comply with 43 U.S.C. § 1744 *prior* to forfeiture? And, if abandonment is in dispute, how difficult would it be for the BLM to offer miners a pre-forfeiture hearing on whether they have performed the minimum assessment work necessary to keep their claim(s) active? Without these procedural safeguards, 43 U.S.C. § 1744 no longer serves its intended purpose of clearing public lands of abandoned claims. Instead, it becomes a convenient device for the government to reclaim established mines for profit at the expense of unprotected and unwary miners. This is true even though those miners have attempted in good faith to comply with every letter of the statute.

In addition, even if the requirement of a pre-forfeiture notice and hearing did increase the steps necessary for the BLM to reclaim public lands, the Supreme Court has held that " 'the Constitution recognizes higher values than speed and efficiency.' The [government's] interest in administrative ease and certainty cannot, in and of itself, save the conclusive presumption from invalidity under the Due Process Clause where there are other reasonable and practicable means of establishing the pertinent facts on which the [government's] objective is premised." *Vlandis v. Kline*, *supra*, 412 U.S. at 451 (quoting from *Stanley v. Illinois*, *supra*, 405 U.S. at 656) (citation omitted). It seems clear that in this case there are other reasonable and practicable methods for establishing whether a miner intends to abandon his claim by not timely filing his assessment notice. It also seems clear that the Lockes have not intended to abandon their claims by filing one day late.

We therefore grant the Lockes' motion for summary judgment and hold that 43 U.S.C. § 1744 is an unconstitutional violation of procedural due process insofar as it creates an irrebuttable presumption of abandonment for failure to timely file the annual assessment notice.

Even if we concluded that the Lockes had not been deprived of their due process rights, we would still grant their motion for summary judgment based on the legislative history of 43 U.S.C. § 1744 as outlined above. Although that statute seems to create a conclusive presumption of abandonment where the assessment notice is not timely filed,[1] this construction does not comport with a reasonable reading of the statute's legislative history or the law prior to FLPMA. As

[1] "The failure to file such instruments as required by subsections (a) and (b) of this section shall be deemed conclusively to constitute an abandonment of the mining claim. . . ." 43 U.S.C. § 1744 (c)

Judge Learned Hand stated: "it is a commonplace that a literal interpretation of the words of a statute is not always a safe guide to its meaning." *Peter Pan Fabrics, Inc. v. Martin Weiner Corp.*, 274 F.2d 487, 489 (2d Cir. 1960). The Supreme Court has also held that "[i]t is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers." *Holy Trinity Church v. United States*, 143 U.S. 457, 459 (1892).

It seems abundantly clear from the history of Section 1744 that it was designed to clear the land of "stale" and "long-dormant" claims. In order to do this, miners were given three years to file their location notices with the BLM. Once this occurred, and those failing to file lost their claims, the purpose of the statute was met. There is no evidence in FLPMA's voluminous history that Congress intended to utilize the annual filings to clear these long-dormant claims. Instead, the evidence indicates that the annual filings were designed to maintain a current index of non-patented claims merely for the convenience of federal land managers. S.Rep. No. 94-583, 94th Cong., 2nd Sess. 65 (1975). In essence, 43 U.S.C. § 1744 simply added a federal recording requirement to the existing General Mining Law provision mandating local recordation of assessment notices. In fact, to satisfy the assessment notice regulations, miners file the exact same documents with both the county recorder's office and the BLM. 43 C.F.R. § 3833.2-1 (1982).

The General Mining Law assessment provision, codified at 30 U.S.C. § 28, has been the subject of several Supreme Court cases. The more significant of these have held that "substantial compliance" with the assessment notice requirement was sufficient to satisfy the statute, since "the 'possessory title' of the claimant, granted by 30 U.S.C. § 26, [may] not be disturbed on

flimsy or insubstantial grounds." *Hickel v. Shale Oil Co.*, 400 U.S. 48, 57 (1970); *see also*, *Wilbur v. Krushnic*, 280 U.S. 306 (1930), and *Ickes v. Virginia-Colorado Development Corp.*, 295 U.S. 639 (1935). After *Hickel v. Shale Oil Corp.*, the language of the BLM's assessment work regulation was amended to read that substantial compliance was all that was required.[8]

It seems to us anomolous [sic] that the government should insist upon the strict forfeiture declared by 43 U.S.C. § 1744 and at the same time retain the regulations under 30 U.S.C. 28 recognizing substantial compliance as the standard.

The history of FLPMA, the stated purpose of 43 U.S.C. § 1744, and the Supreme Court precedent of *Hickel*, all indicate that the standard to be applied to assessment notice requirements is substantial compliance. Measured against this, the Lockes have satisfied their statutory duties under Section 1744 by filing their notices one day late.

---

[8] Before 1972, the regulation provided:

§ 3841.3 Failure to perform assessment work.

Failure to make the expenditure or perform the labor required upon a location made before or since May 10, 1872 will subject a claim to relocation unless the original locator, his heirs, assigns, or legal representatives have resumed work after such failure and before relocation.

After 1972, the regulation provided, and still provides:

§ 3851.3 Effect of failure to perform assessment work.

(a) Failure of a mining claimant to comply substantially with the requirement of an annual expenditure of $100 in labor or improvements on a claim imposed by section 2324 of the Revised Statutes (30 U.S.C. 28) will render the claim subject to cancellation.

(b) Failure to make the expenditure or perform the labor required upon a location will subject a claim to relocation unless the original locator, his heirs, assigns, or legal representatives have resumed work after such failure and before relocation.

In consideration of the premises,

IT HEREBY IS ORDERED that plaintiffs' motion for summary judgment is hereby granted and defendants' motion for summary judgment is hereby denied.

DATED October 19, 1983.

/s/ Bruce R. Thompson
UNITED STATES DISTRICT JUDGE

APPENDIX B
UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Civil Action Docket No. CV-R-82-297-BRT

MADISON D. LOCKE, ROSALIE E. LOCKE, SAM BUCCAMBUSO, AND TONY BUCCAMBUSO, PLAINTIFFS,

vs.

UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF THE INTERIOR, JAMES WATT., ET AL., DEFENDANTS.

[Entered: Oct. 24, 1983]

JUDGMENT

This action came on for hearing before the court, United States District Judge BRUCE R. THOMPSON presiding. The issues having been duly heard and a decision having been duly rendered, it is ordered and adjudged.

IT IS HEREBY ORDERED: That Plaintiffs' Motion for Summary Judgment is hereby granted and Defendants' Motion for Summary Judgment is hereby denied.

Dated at: October 24, 1983
Reno, Nevada

CAROL C. FITZGERALD, CLERK

By /s/ Colleen Larsen
Deputy Clerk of the Court

APPENDIX C
UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Civil No. R-82-297-BRT

MADISON D. LOCKE, ROSALIE E. LOCKE, SAM BUCCAMBUSO, AND TONY BUCCAMBUSO, PLAINTIFF,

v.

UNITED STATES OF AMERICA, ET AL., DEFENDANTS.

[Filed Nov. 21, 1983]

NOTICE OF APPEAL

Notice is hereby given that the defendant UNITED STATES OF AMERICA, by and through the office of the United States Attorney, Lamond R. Mills, and Shirley Smith, Assistant United States Attorney, hereby appeals to the United States Supreme Court from the Order of this Court granting Summary Judgment, entered in the above-captioned case heretofore on October 21, 1983.

LAMOND R. MILLS
United States Attorney
By: /s/ Shirley Smith
SHIRLEY SMITH
Assistant United States Attorney

APPENDIX D

UNITED STATES DEPARTMENT OF
THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203

MADISON D. LOCKE ET AL.

IBLA 81-631
81-632

Decided June 25, 1982

Appeals from decisions of the Nevada State Office, Bureau of Land Management, declaring mining claims abandoned and void. N MC-121456 through N MC 121459 and N MC 121469 through N MC 121486.

Affirmed in part, dismissed in part.

1. Appeals—Rules of Practice: Appeals: Dismissal—Rules of Practice: Appeals: Timely Filing

   Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment—Mining Claims: Abandonment

   The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

3. Estoppel—Federal Employees and Officers: Authority to Bind Government

   Reliance on erroneous information provided by a Bureau of Land Management employee cannot relieve the owner of an unpatented mining claim of an obligation imposed by statute, or create rights not authorized by law, or relieve the claimant of the consequences imposed by the statute for failure to comply with its requirements.

4. Administrative Authority: Generally—Constitutional Law: Generally—Statutes The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not the Federal Land Policy and Management Act of 1976 is constitutional.

5. Administrative Procedure: Hearings—Constitutional Law: Due Process—Rules of Practice: Hearings

   Due process does not require notice and a right to a prior hearing in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

APPEARANCES: Harold A. Swafford, Esq., Reno, Nevada, for appellants.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

On May 1, 1981, appellants herein filed a notice of appeal from four decisions of the Nevada State Office, Bureau of Land Management (BLM), dated April 4, 1981, which declared mining claims (N MC 121456 through N MC 121459 and N MC 121460 through N MC 121466) invalid for failure to file a notice of intent to hold the claims or proof of assessment work as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2. The claims were located in 1962 and 1965, and recorded with BLM on October 19, 1979.

The notice of appeal also states that two previous decisions, one dated July 10 and one dated September 12, 1980, are being appealed. As appellants' statement of reasons addresses the substance of these earlier decisions we will respond to this matter at the outset.

(1) The concluding paragraph of each of the earlier decisions advises the parties affected thereby of their right of appeal, of the governing regulations, and of the time limits which must be met to avoid summary dismissal of an appeal. These regulations require that a notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. 43 CFR 4.411(a). These provisions are mandatory inasmuch as they determine the jurisdiction of the Board to hear an appeal, and are not subject to waiver. Appellants' notice of appeals as to BLM's July and September decisions is untimely. Therefore, as to those decisions, the appeal cannot be considered and must be dismissed. *DNA—People's Legal Services*, 49 IBLA 307 (1980); *Ilean Landis*, 49 IBLA 59 (1980).

As to the April 1981 decisions, the appeal is timely, and the Board has jurisdiction thereof. All of the claims involved were located before October 21, 1976. No notice of intent to hold the claims or proof of assessment

work was filed with BLM by December 30, 1980, the date by which appellants were required to file such documents. On August 21 and September 8, 1981, appellants' supplemented the record herein by filing certain photographs and an affidavit of Rosalie E. Locke attesting to production between 1960 and 1980 on the claims at issue.

In their statement of reasons appellants contend that on December 31, 1980, they filed affidavits of assessment work for all of the claims. Appellants say they were erroneously advised by unnamed BLM personnel as to the proper filing date. They further contend that the applicable provision of FLPMA and regulations are unconstitutional and invalid, respectively, having resulted in a taking of appellants' property without notice and opportunity to be heard. Appellants have requested an evidentiary hearing before an Administrative Law Judge in connection with their appeal.

(2) The pertinent regulation, 43 CFR 3833.2-1(a) provides:

> The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Failure to file the necessary instruments within the time period prescribed conclusively constitutes abandonment of the claim or claims. 43 CFR 3833.4. This Board has no authority to excuse lack of compliance with these requirements or to afford relief from statutory consequences. *Betty L. Henry*, 55 IBLA 47 (1981). *Lynn Keith*, 53 IBLA 192, 88 I.D. 369 (1981). Nor do the additional documents filed by appellants after the BLM decision herein change our finding that appellants

failed to file timely the required notice of intent to hold the claims or proof of assessment work.

(3) As to the argument that BLM misled appellant as to when the proof of assessment work should be filed, the Board has repeatedly held that the public may not rely on erroneous information given out by an employee of the Department. Reliance on erroneous information provided by a BLM employee cannot relieve the owner of an unpatented mining claim of an obligation imposed by statute or regulation, or create rights not authorized by law, or relieve the claimant of the consequences imposed by statute for failure to comply with its requirements. *John Platt, Jr.*, 53 IBLA 313 (1981), and cases cited therein.

(4) Appellants' argument that the recordation requirements are unconstitutional may not be considered by this Board. The Department of the Interior as an agency of the executive branch of the Federal Government is not a proper forum to consider the constitutionality of the recordation provisions of FLPMA, *supra*. *Alice E. Deetz*, 48 IBLA 59 (1980). In addition, regulations promulgated pursuant to these provisions have been upheld. *Topaz Beryllium Co. v. United States*, 479 F. Supp. 309 (D. Utah 1979), *aff'd*, 649 F.2d 775 (10th Cir. 1981).

(5) Due process does not require notice and a right to a prior hearing in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the initial BLM decision, adverse to him, becomes final. Appeal to this Board satisfies the due process requirements. *George H. Fennimore*, 50 IBLA 280 (1980); *Dorothy Smith*, 44 IBLA 25 (1979); *H.B. Webb*, 34 IBLA 362 (1978). Moreover, a hearing is not required in the absence of assertions of facts which, if proved true, would entitle appellant to the relief sought.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of April 4, 1981, are affirmed, and the appeal is dismissed insofar as it addresses the decisions of July and September 1980.

/s/ Anne Poindexter Lewis
ANNE POINDEXTER LEWIS
Administrative Judge

We concur:

/s/ Bruce R. Harris
BRUCE R. HARRIS
Administrative Judge

/s/ Edward W. Stuebing
EDWARD W. STUEBING
Administrative Judge

APPENDIX E

UNITED STATES DEPARTMENT OF
THE INTERIOR
BUREAU OF LAND MANAGEMENT

Nevada State Office
300 Booth Street
P.O. Box 12000
Reno, Nevada 89520

April 4, 1991

CERTIFIED MAIL

Madison D. Locke
P.O. Box 351
East Ely, NV 89315

DECISION

Mining Claim Recordation

Mining Claims Declared Abandoned and Void

Your mining claims identified by serial numbers (see attachment) are hereby declared abandoned and void for the reason stated below.

Your Notice of Intent or Proof of Labor was not received in this office by December 30, 1990. The failure to file such instruments as are required by 43 CFR 3833.2 within the time limits prescribed therein shall be deemed conclusively to constitute an abandonment of the mining claim, mill site, or tunnel site and shall be void.

Subject to valid intervening rights of third parties or the United States void or abandoned claims or sites may be relocated and, based on the new location date, the appropriate instruments may be refiled within the time periods prescribed by the regulations.

You have the right of appeal to the Board of Land Appeals, Office of the Secretary in accordance with the

regulations in 43 CFR Part 4.400. If an appeal is taken, the notice of appeal must be filed in the Nevada State Office (not the Office of the Board) within thirty (30) days of receipt of the decision appealed from, so that the case file can be transmitted to the Board. The notice may contain a statement of reasons for the appeal, but if not, such a statement must be filed with the Board (address Board of Land Appeals, Office of the Secretary, Department of the Interior, 4015 Wilson Blvd., Arlington, Virginia 22203) within thirty (30) days after the notice was filed. Additionally, the appellant must serve a copy of the notice of appeal and of any reasons, written arguments, or briefs on the Associate Solicitor, Division of Energy and Resources (address: Office of the Solicitor, U.S. Department of the Interior, 18th and C Streets, N.W. Washington, D.C. 20240) and each adverse party named in the decision appealed from, in the manner prescribed in Sec. 4.401(c), not later than 15 days after filing the document. To avoid summary dismissal of the appeal there must be strict compliance with the regulations. The appellant has the burden of proof by positive and substantial evidence wherein the decision appealed from is in error.

/s/ Pamela D. Ouillette
for Loyd C. Miller
Chief, Branch of Records
and Data Management

Enclosure

Date of Location	Date of Filing	Name of Claim	M MC Number
May 8, 1982	October 19, 1979	Fields #1 thru 4	M MC-121456 thru 121459
August 13, 1982	October 19, 1979	Field #5	M MC-121460
May 8, 1982	October 19, 1979	Fields #6 thru 10	M MC-121461 thru 121465
July 20, 1985	October 19, 1979	Isbell	M MC-121466

APPENDIX F

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS

The Fifth Amendment to the United States Constitution provides in pertinent part that "[n]o person shall * * * be deprived of life, liberty, or property, without due process of law."

Section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1744, provides in pertinent part:

> Recordation of mining claims
>
> (a) Filing requirements
>
> The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31, of each year thereafter * * *
>
> (1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, or a detailed report provided by section 28-1 of title 30, relating thereto.
>
> (2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

* * * * *

(c) Failure to file as constituting abandonment; defective or untimely filing

The failure to file such instruments as required by subsections (a) and (b) of this section shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner; but it shall not be considered a failure to file if the instrument is defective or not timely filed for the record under other Federal laws permitting filing or recording thereof, or if the instrument is filed for record by or on behalf of some but not all of the owners of the mining claim or mill or tunnel site.

• • • • •

43 C.F.R. 3833.2-1(a) provides:

The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, which ever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

43 C.F.R. 3833.4 provides:

Failure to file

(a) The failure to file an instrument required by §§ 3833.1-2(a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void.

(b) The fact that an instrument is filed in accordance with other laws permitting filing or recording thereof and is defective or not timely filed for record under those laws, or the fact that an instrument is filed for record under this subpart by or on behalf of some, but not all of the owners of the mining claim, mill site, or tunnel site, shall not be considered failure to file an instrument under this subpart.

MOTION

Supreme Court, U.S.
FILED
MAY 11 1984
ALEXANDER L. STEVAS,
CLERK

No. 83-1294

In The

Supreme Court of the United States

October Term, 1983

United States of America, *et al.*,
Appellants,

v.

Maddrix D. Locke, *et al.*,
Appellees.

On Appeal from the United States
District Court for the District of Nevada

APPELLEES' MOTION TO AFFIRM

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TABLE OF CONTENTS

	Page
OPINIONS BELOW, JURISDICTION AND CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED	2
TABLE OF AUTHORITIES	ii
APPELLEES' MOTION TO AFFIRM	1
STATEMENT OF THE CASE	1
ARGUMENT	5
A. THE DECISION BELOW IS MANIFESTLY CORRECT	5
B. THERE IS NO CONFLICT IN THE FEDERAL JUDICIARY	9
C. APPELLANTS' OTHER CONTENTIONS	10
D. THE LOCKES HAVE SUBSTANTIALLY COMPLIED WITH FLPMA	12
CONCLUSION	19
APPENDIX A	1a

TABLE OF AUTHORITIES

CASES:	Page
Black v. Elkhorn Mining Company, 163 U.S. 445 (1896)	5
Forbes v. Gracy, 94 U.S. 762 (1877)	5
Mamaul v. Wolf, 102 U.S. 320 (1994)	5
Wallace v. Eldridge, 424 U.S. 319, 324-5 (1976)	9, 12
Morrissey v. Brewer, 408 U.S. 471 (1972)	9, 12
Rogers v. United States, 375 F.Supp. 4 (D. Mont., 1962)	5, 10
St. Louis Mining & Milling Co. v. Montana Mining Co., 171 U.S. 650, 655 (1898)	5
Sniadach v. Illinois, 395 U.S. 337 (1972)	6, 8
Fuentes Inc. v. Shevin, 404 U.S. 316 (1982)	11, 12
Topaz Beryllium Co. v. United States, 479 F.Supp. 309 (D. Utah, 1979), *aff'd*, 649 F.2d 775 (10th Cir., 1981)	10
Vlandis v. Kline, 412 U.S. 441 (1973)	6, 7, 8
Weinberger v. Salfi, 422 U.S. 749 (1975)	7
Western Mining Council v. Watt, 643 F.2d 618, cert. denied, 454 U.S. 1031 (1981)	10
Wilbur v. United States, 280 U.S. 306, 316-317 (1930)	5

STATUTES:

"Common Variation Act" 1955, 30 U.S.C. 611	2, 4
Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, 90 Stat. 2743 (codified at 43 U.S.C. & Supp. V) 1701 et seq.	2
§ 314(a), 43 U.S.C. 1744(a)	2
§ 314(b), 43 U.S.C. 1744(b)	2
§ 314(c), 43 U.S.C. 1744(c)	2, 6, 10
30 U.S.C. § 29	11
R.S. 2477	2

MISCELLANEOUS:

S.Rep. No. 49-583, 94th Cong., 2d Sess. 65 (1975)	8

OPINIONS BELOW, JURISDICTION AND CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

The Appellant's Jurisdictional Statement is accurate in connection with the identification of parties (p. II), the identification of opinions below (p. 1), the identification of jurisdiction invoked under 28 U.S.C. 1252 and the identification of constitutional, statutory and regulatory provisions involved.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-1294

UNITED STATES OF AMERICA, *et al.*,
Appellants,

v.

MADISON D. LOCKE, *et al.*,
Appellees.

On Appeal from the United States
District Court for the District of Nevada

APPELLEES' MOTION TO AFFIRM

Appellees move to affirm the judgment of the district court on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument:

A. The decision below is so obviously correct as to warrant no further review.

B. There is an absence of any conflict of opinions in the federal courts.

STATEMENT OF THE CASE

Appellees (hereinafter "Locke") own ten unpatented mining claims located on public lands near Ely, Nevada.[1]

---

[1] The district court's opinion is reprinted as Appendix "A" to the *Jurisdictional Statement*. U.S. App. shall refer to the Appendix to the *Jurisdictional Statement*. The facts presented herein were

The claims were located for their sand, gravel and other building materials prior to passage of the "Common Varieties Act" on July 23, 1955 (30 U.S.C. 611), which prohibited future location of building materials claims. The Lockes' claims were located in full compliance with applicable federal and state laws. They have operated the claims continuously since 1960, producing more than $4,000,000 in materials since that date.

The claims are operated as a family business and several members of the Locke family rely upon this business for their livelihood. Each year, pursuant to Nevada law (N.R.S. 517.230) the Lockes have recorded affidavits of annual assessment work with the White Pine County Recorder setting forth the work accomplished during the applicable "assessment year".

In 1976 the United States enacted the Federal Land Policy and Management Act, Pub. L. No. 94-579, 90 Stat. 2743, 43 U.S.C. §§ 1701-82 (hereinafter "FLPMA").[5] Sections 314(a) and (b) of the Act require the owners of mining claims located prior to October 21, 1976, to file with the Bureau of Land Management in the appropriate district, prior to October 21, 1979, a certificate or notice of location for each claim and a description (or map) of the claim. Section 314(a) requires, further, that the miner must file a copy of his affidavit of annual assessment work, or notice of intention to hold the claim, "prior to" December 31st of each year thereafter.

---

uncontested below and are discussed in the district court's opinion at 519 F.Supp. 472, at 473-474, U.S. App. 1a-3a. No evidence was presented by the federal defendants below (Appellants here). The district court's findings of fact are based on evidence produced by Appellees before the Interior Board of Land Appeals and re-introduced in the district court.

[5] Section 314 of the Act, 43 U.S.C. § 1744, at issue herein, is set forth in its entirety in Appendix "A" hereto.

Section 314(c) of the Act provides:

> The failure to file such instruments as required by subsections (a) and (b) *shall be deemed conclusively to constitute an abandonment of the mining claim* . . . *by the owner*. (Emphasis supplied).

Pursuant to the requirements of FLPMA the Lockes filed their certificates of location, maps showing the location of their claims and affidavits of assessment work for the claims on October 19, 1979, with the BLM in Reno, Nevada, thereby complying fully with the Act. Upon receiving the Lockes' documents on October 19, 1979, the BLM set up a file in their names and recorded the claims as active mining claims in the records of the BLM.

During the 1979-1980 assessment year (September 1, 1979-August 31, 1980) the Lockes produced and sold more than $1,000,000 in materials from the subject claims. On August 29, 1980 the Lockes recorded affidavits of annual assessment work with the White Pine County Recorder in regard to the subject claims.

During the late Fall of 1980 the Lockes' daughter, LAURA C. LOCKE, inquired of the Ely, Nevada, district office of the BLM as to 1980 filing requirements and in early December, 1980, she went personally to the Ely Office of the BLM to discuss the filing requirements with BLM personnel. She was informed by BLM employees that the deadline for filing affidavits of assessment work, as required by the Act, was December 31, 1980. On December 31, 1980, the Lockes made the approximately 700 mile round trip from Ely to Reno, Nevada, to hand deliver their affidavits of assessment work. The Lockes filed their affidavits and they were accepted by the BLM office in Reno. The Lockes then returned to Ely to continue working their mining business. See, U.S. App. 2a.

On April 4, 1981, the Lockes were served with a Decision by the BLM, by Loyd C. Miller, that their mining claims "are hereby declared abandoned and void" because

the "Proof of Labor was not received in this office by December 30, 1960." U.S. App. 22a-23a.

The decision explains that:

> Subject to valid intervening rights of third parties or the United States, void or abandoned claims or sites may be relocated and, based on the new location date, the appropriate instruments may be refiled within the time periods prescribed by the regulations. U.S. App. 22a.

In the Lockes' case the suggestion of relocation is erroneous because the subject claims are building materials claims and could not be relocated after July 23, 1955. 30 U.S.C. § 611.

On May 1, 1981, within the time prescribed by statute, the Lockes appealed the declaration of abandonment to the Interior Board of Land Appeals (IBLA). They presented voluminous evidence to the IBLA that their claims had not been abandoned and that they were actively working the claims and had been actively working the claims since 1960. They presented production records and aerial photographs of the claims showing extensive workings on the various claims. They submitted a brief to the IBLA explaining their position and legal reasons why the April 4, 1961 decision of the BLM should be vacated.

The Lockes' appeal was unopposed by the Appellants; nevertheless, on June 25, 1982, the IBLA dismissed the Lockes' action and affirmed the decision of the BLM. The IBLA refused to address the Lockes' constitutional arguments. U.S. App. 16a-21a.

The Lockes then filed an action in the United States District Court for the District of Nevada on September 2, 1982, to attack Section 314 of FLPMA, on the ground that, as applied to them, it results in a denial of procedural due process in that it operates to take their property without compensation and without notice or an opportunity to be heard.

None of the foregoing facts was disputed and the parties filed cross motions for summary judgment to determine the constitutionality of Section 314 of FLPMA. On October 19, 1983, the district court entered its decision granting the Lockes' motion for summary judgment, ruling that the Act cannot be applied against the Lockes so as to deprive them of their property and that as applied to them it constitutes a denial of procedural due process under the Fifth Amendment of the Constitution of the United States of America. U.S. App. 10a. The district court held, further, that even if the statute is constitutional the Lockes "substantially complied" with its terms and their property is thereby not subject to the conclusive presumption of abandonment provisions of the statute. U.S. App. 11a-12a.

ARGUMENT

A. THE DECISION BELOW IS MANIFESTLY CORRECT

The decision below is correct and no further review is warranted. The district court first held that the Lockes' unpatented mining claims constitute "property" entitled to due process protection. U.S. App. 8a. In *Wilbur v. United States*, 280 U.S. 306, 316-317 (1930), the Supreme Court stated:

> [An unpatented mining] claim is property in the fullest sense of that term; and may be sold, transferred, mortgaged and inherited without infringing any right or title of the United States. The right of the owner is taxable by the state; and is "real property".

This holding is not subject to dispute. *See, also, St. Louis Mining & Milling Co. v. Montana Mining Co.*, 171 U.S. 650, 655 (1898); *Forbes v. Gracy*, 94 U.S. 762 (1877); *Mansel v. Wolf*, 152 U.S. 510 (1894); *Black v. Elkhorn Mining Company*, 163 U.S. 449 (1896); *see, also Rogers v. United States*, 575 F.Supp. 4 (D. Mont., 1982).

After determining that the Lockes owned "property rights" subject to due process protections the district court analyzed Section 314 of FLPMA and determined that Section 314(c) sets up an "irrebuttable presumption of abandonment" upon the Lockes' failure to file their affidavit by the December 30, 1980 deadline. U.S. App. 5a. This conclusion was inescapable from the clear language of Section 314(c):

> The failure to file such instruments as required . . . shall be deemed conclusively to constitute an abandonment of the mining claim . . . .

See, Vlandis v. Kline, 412 U.S. 441 (1973); *Stanley v. Illinois*, 405 U.S. 645 (1972). The district court properly applied the "irrebuttable presumption analysis" promulgated by the Supreme Court in *Vlandis, supra*. U.S. App. 5a-7a. In that case the Court stated:

> If a statute creates an irrebuttable presumption, due process demands a hearing to provide the party affected an opportunity to rebut the presumption whenever the presumption is not necessarily or universally true in fact and the government has available reasonable alternative means of making the crucial determination. 412 U.S. at 452.

In the instant case the Lockes' failure to file affidavits by December 30, 1980, set up an irrebuttable presumption that their claims were abandoned. In fact, they were actively operating them and actually filed their affidavits on December 31, 1980. There is no indication that the Lockes ever intended to abandon their claims. To the contrary, they actively sought to protect their claims, including obtaining advice from BLM personnel as to when they should file their affidavits. Thus, the presumption of abandonment under the Act is not "universally true".

As in *Vlandis*, due process demands a hearing to provide the Lockes an opportunity to rebut the presumption.

This is especially true where the government has available reasonable alternative means of making the determination as to whether the Lockes' mining claims were, in fact, abandoned. Since the Lockes had mined $4,000,000 in materials and had fully complied with the Act by filing their documents with the BLM in 1979 and had filed their affidavits on December 31, 1980, it should have been obvious to BLM personnel that the Lockes had not abandoned their claims.

Any issue regarding "abandonment" could have been easily determined by writing the Lockes a letter inquiring about the status of the claims or alternatively providing them an opportunity to request a hearing to rebut the presumption of "abandonment". As noted by the district court the BLM had a file on the Lockes and knew their mailing address. U.S. App. 9a. It was because of this file that the BLM mailed them the decision of April 4, 1981, declaring the claims abandoned. The district court was, thus, eminently correct in its decision that the BLM had "reasonable alternative means" of making a determination as to whether the Lockes had, in fact, abandoned their claims.

The district court rejected the position of the federal defendants below that the *Vlandis* rebuttable presumption analysis has been overruled by *Weinberger v. Salfi*, 422 U.S. 749 (1974). In *Weinberger* the court *distinguished Vlandis* but did not overrule that case. A prior hearing could not have reasonably determined the factual issue and the Social Security Administration therefore did not have available "reasonable alternative means of making the crucial determination."[3] In contrast, the facts of the

---

[3] In *Weinberger* the Court observed (as quoted by the district court at U.S. App. 7a) that:

> [it is not] at all clear that individual determinations could effectively filter out sham arrangements, since neither marital intent, life expectancy, nor knowledge of terminal illness has been shown by appellees to be reliably determinable. 422 U.S. 782-83.

present case resemble *Vlandis* because individual determinations are clearly possible. U.S. App. 7a. Furthermore, in the instant case the BLM had actual knowledge that the Lockes' mining claims were being actively worked and that they had operated these claims for more than 20 years. A minimal inquiry would have determined that the Lockes did not intend to abandon their properties.

The Lockes actually filed their affidavits of assessment work, showing the production for the 1979-80 assessment year, with the BLM on December 31, 1980—one day late. Hence, when the BLM entered its decision on April 4, 1981 that the claims were declared abandoned, the BLM officer who authored the opinion knew that the claims were in fact not abandoned and that the Lockes were continuing to work the claims. In these circumstances, the district court noted:

> Without these procedural safeguards [*i.e.*, an inquiry or hearing] 43 U.S.C. § 1744 no longer serves its intended purpose of clearing public lands of abandoned claims. Instead, it becomes a convenient device for the government to reclaim established mines for profit at the expense of unprotected and unwary miners. This is true even though those miners have attempted in good faith to comply with every letter of the statute. U.S. App. 9a.

As noted by the district court the intent of Congress in enacting Section 314 of the Act was to rid the public lands of so-called "stale" claims and to permit federal land managers to inventory active claims. U.S. App. 8a-9a; S. Rep. No. 49-583, 94th Cong., 2nd Sess. 65 (1975). These purposes were met by the Lockes when they filed their documents with the BLM on October 19, 1979. U.S. App. 9a.

Even if there were some small burden on the BLM in providing a pre-forfeiture notice, or opportunity for hearing, this Court has recognized that "the Constitution recognizes higher values than speed and efficiency". *Stanley v. Illinois*, 405 U.S. 645, 656 (1972). In the case at bar there were reasonable alternative means for determining whether the Lockes intended to abandon their claims; thus a pre-forfeiture hearing, or inquiry, should have been provided.

The district court would necessarily have reached the same conclusion if it had applied the "flexible" due process test discussed by the Court in *Morrissey v. Brewer*, 408 U.S. 471 (1972). This test would require a balancing of the interests of the Lockes and the government and would require the Court to consider the Lockes' interest, the government's interest, and any procedural safeguards that might be substituted. *See*, also, *Mathews v. Eldridge*, 424 U.S. 319, 334-5 (1976).

Pursuant to this test the Lockes' property, worth a considerable sum, and their livelihood ($4,000,000 income since 1960) would be considered together with the government's interest in eliminating "stale" claims and inventorying active claims on the public domain. The Court might also consider the appropriateness of additional procedural safeguards. *Mathews*. Upon analysis it is immediately apparent that if the Appellants' view is adopted by the Court the Lockes stand to lose their entire property and livelihood without any substantial advancement of the government's interest. By eliminating the Lockes' *active* claims its interest in eliminating only "stale" claims will actually be impaired. Alternative, or additional, procedural safeguards could be easily implemented by a simple inquiry by the BLM to the Lockes as to whether they still intended to work their claims. Hence, if the district court had applied the *Morrissey* and *Mathews* analysis the result would have been the same.

B. THERE IS NO CONFLICT IN THE FEDERAL JUDICIARY

There is no conflict of opinions in the federal courts regarding the constitutional issue now before the Court. The Appellants indicate, at footnote 8 in their Jurisdic-

tional Statement, that various courts have ruled both ways on the constitutionality of Section 314 of FLPMA.

To date, only two federal courts have faced the question of whether the conclusive presumpton of abandonment set up by Section 314(c) of the Act constitutes a denial of procedural due process. In both of these cases, *Rogers v. United States*, 575 F.Supp. 4 (D. Mont., 1982) and the case at bar, the district court ruled that the application of the statute so as to terminate the miner's interest, where he had no intention to abandon his claims, constitutes a denial of procedural due process. No other federal case cited by the Appellants deals with the procedural due process question.

In *Western Mining Council v. Watt*, 643 F.2d 618, *cert. denied*, 454 U.S. 1031 (1981), the court dealt with certain substantive due process issues. In *Topaz Beryllium Co. v. United States*, 479 F.Supp. 309 (D. Utah, 1979) *aff'd*, 649 F.2d 775 (10th Cir., 1981), the court was concerned with certain regulations involving transfers of mining properties. Likewise, none of the other federal cases cited by the Appellants involve procedural due process issues under Section 314 of FLPMA.

C. APPELLANTS' OTHER CONTENTIONS

One of the Appellants' primary contentions in their Jurisdictional Statement is that tens of thousands of mining claims will be affected by the district court's ruling and that the BLM may have to spend years "resolving the backlog" of cases. Jurisdictional Statement pp. 11, 12; footnotes 11, 12. The Appellants' fears are not justified and there are probably very few cases that will ever be litigated.

It should be noted that there is no evidence in the record in regard to the large numbers of mining claims that are affected by the decision. Although the Appellants were free to make a proper record below they failed to do so and such representations at this point are nothing but hearsay or conjecture. But, even if the BLM "closed" some 48,000 mining claims in Nevada and 15,000 in Montana (Jurisdictional Statement at footnote 11), most of those claims will never be a cause for concern.

Most of those claims would, in fact, be stale claims which would not be pursued. Of the remainder, the owners have most likely re-located them if they are valuable and these will not give rise to litigation. Where "junior" locators have filed over claims that were declared "abandoned" under Section 314 of FLPMA, the senior locator has no rights unless he has actively pursued his rights against the junior locator and continued to perform his annual assessment work. Presumably, in most cases the senior locator has simply left the area and has permitted the junior locator to take over. In that event, the senior locator would lose his claims even if FLPMA had never been enacted since he has not performed $100 worth of assessment work each year as required by 30 U.S.C. § 28.

In the final analysis the only cases that could cause any problems are cases where the senior locator has continued to assert his rights against the junior locator and where the senior locator has continued to perform his annual assessment work. In those cases--if there are any—the BLM will not be involved. It would simply amount to a dispute between rival claimants that a court could resolve. The alleged heavy burden on the BLM is more of a fiction than a fact.

Even if there could be some burden on the BLM caused by the decision of the district court it is no answer to shuffle that burden off onto the Lockes by sacrificing their properties. As this Court has held:

> the Constitution recognizes higher values than speed and efficiency. *Vlandis*, at 451.

Texaco Inc. v. Short, 454 U.S. 516 (1982), is also relied upon by the Appellants. That case, however, is immediately distinguishable. In *Texaco* the Court held that an

Indiana statute was *reasonable*, and could thereby withstand a constitutional attack, where it provided for merger of a severed mineral estate with the fee estate upon the following:

1. No work of any kind performed for 20 years.
2. No taxes paid by the owner of the mineral estate for 20 years.
3. No rents or royalties generated for 20 years.
4. No statement of an interest filed within 20 years.

The facts in *Texaco* are, thus, quite different from the instant case where the Lockes have been actively working and earning their living from the claims for 24 years. It does not follow that what is reasonable in one factual situation is necessarily reasonable in another. Indeed, the Supreme Court has held that each case should be decided on its own facts. *Morrissey, Matheus, supra.*

D. THE LOCKES HAVE SUBSTANTIALLY COMPLIED WITH FLPMA

For the reasons stated in the decision of the district court the Lockes substantially complied with Section 314 of FLPMA by meeting all requirements of that Act, although one day late. None of the governmental objectives were defeated by a delay of one day and, as noted by the district court, related mining statutes require only substantial compliance and there is no indication that Congress intended a different result here. U.S. App. 10a-12a. Justice requires that the Lockes be protected in thier property either through the Fifth Amendment or by statutory construction that prevents a denial of due process of law.

CONCLUSION

The decision of the district court should be affirmed.

Respectfully submitted,

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APPENDIX A

SECTION 314 Federal Land Policy and Management Act

43 US § 1744

§ 1744. Recordation of mining claims

(a) Filing requirements

The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. The owner of an unpatented lode or placer mining claim located after October 21, 1976 shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection.

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on a detailed report provided by section 28-1 of Title 30, relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

(b) Additional filing requirements

The owner of an unpatented lode or placer mining claim or mill or tunnel site located prior to October 21,

1976 shall, within the three-year period following October 21, 1976, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground. The owner of an unpatented lode or placer mining claim or mill or tunnel site located after October 21, 1976 shall, within ninety days after the date of location of such claim, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground.

(c) Failure to file as constituting abandonment; defective or untimely filing

The failure to file such instruments as required by subsections (a) and (b) of this section shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner, but it shall not be considered a failure to file if the instrument is defective or not timely filed for record under other Federal laws permitting filing or recording thereof, or if the instrument is filed for record by or on behalf of some but not all of the owners of the mining claim or mill or tunnel site.

REPLY

BRIEF

Office - Supreme Court, U.S.
FILED
MAY 22 1984
ALEXANDER L. STEVAS
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(3)

No. 83-1394

In the Supreme Court of the United States

OCTOBER TERM, 1983

UNITED STATES OF AMERICA, ET AL., APPELLANTS

v.

MADISON D. LOCKE, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

REPLY MEMORANDUM FOR APPELLANTS

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4 pp

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Appellees ask this Court summarily to affirm the judgment below. It is evident, however, that a decision striking down as unconstitutional a significant feature of a major regulatory statute warrants plenary review by this Court. Because most of appellees' arguments were anticipated and answered in the Jurisdictional Statement, only a short reply is required.

1. Appellees contend (Mot. to Aff. 7-9) that individual notification and hearings to allow claimants to prove that they have not abandoned a claim would constitute a "reasonable" alternative to the system Congress established in connection with the filing requirements under Section 314 of the Federal Land Policy and Management Act of 1976. As we noted in our Jurisdictional Statement (at 18), we believe such alternative procedures would create a significant administrative burden for BLM. But, more importantly, Congress chose a system different from the one

appellees propose. The real question is not whether one system is more "reasonable" than another, but whether the Constitution bars the system Congress has established.

2. Appellees dispute our prediction that the practical problems created by the decision below include uncertainty about the status of thousands of determinations previously made by the Interior Department, which could be affected if courts were to apply the decision below retrospectively (Mot. to Aff. 10-11). The suggestion is that most of the claims that have been administratively "closed" pursuant to Section 314 in Nevada and Montana are either stale claims that would not be pursued by claimants or claims that have been relocated.

Appellees' assertion on this score is mere conjecture. But even assuming its accuracy, there nevertheless would be no way to resolve the status of the supposedly stale claims without thousands of individual administrative determinations.[1] And even if it developed that only a small percentage of claimants were interested in reviving their claims by establishing nonabandonment, BLM might be required to hold hundreds of hearings. At the very least, BLM is adversely affected by the immediate uncertainty about the status of claims located on federal land the agency has used,

[1]BLM has recently published statistics indicating that in the period from October 21, 1976, through September 30, 1983, it "closed" 39,451 claims in Nevada and 18,100 claims in Montana. Bureau of Land Management, U.S. Dep't of the Interior, *Public Land Statistics 1983*, at 145 (1984). Thus, it appears that the preliminary figures we provided in the Jurisdictional Statement (at 11 n.11) were too high for Nevada and too low for Montana. On a nationwide basis, approximately 415,000 claims have been administratively closed during the same period. *Public Land Statistics 1983*, *supra*, at 145. As we noted previously (J.S. 11 n.11), BLM estimates that a high percentage of the closed cases was attributable to the failure of claimants to make a timely annual filing.

or wishes to use, in connection with some governmental purpose. And, as appellees acknowledge, in cases not directly affecting BLM the decision below could cause disputes between junior and senior locators if the latter has failed to meet a statutory filing deadline. Such disputes will both burden the courts and interfere with efficient use of available mineral resources. Thus, contrary to appellees' claim, in addition to the other practical problems we have described in the Jurisdictional Statement, the decision below could create significant difficulties in connection with past administrative determinations.[2]

For these reasons and those stated in the Jurisdictional Statement, probable jurisdiction should be noted.

Respectfully submitted.

REX E. LEE
Solicitor General

MAY 1984

[2]We note that since the Jurisdictional Statement was filed, two other decisions involving the Section 314 filing requirements have been issued. *Oregon Portland Cement Co.* v. *Dep't of the Interior*, No. A82-510 CIV (D. Alaska Apr. 23, 1984); *NL Industries, Inc.* v. *Watt*, No. CIV-LV 82-176, RDF (D. Nev. Mar. 13, 1984). Both cases were decided on the basis of interpretation of Interior Department regulations issued in connection with Section 314; thus, neither court found it necessary to decide the constitutional issue presented by this case. See *Oregon Portland Cement Co.*, slip op. 19 n.9.

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AMICUS CURIAE

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Appellees.

On Appeal from the United States
District Court for the District of Nevada

[redacted]

AMICUS CURIAE BRIEF OF SIERRA CLUB
IN SUPPORT OF APPELLANTS

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IN SUPPORT OF APPELLANTS

TABLE OF CONTENTS

Page

INTEREST OF AMICUS CURIAE..... 1

SUMMARY OF ARGUMENT..... 2

STATEMENT OF FACTS..... 3

ARGUMENT..... 4

I. THE COURT'S DECISION IN TEXACO, INC. v. SHORT SETS FORTH PRINCIPLES APPLICABLE TO DETERMINING THE CONSTITUTIONALITY OF SECTION 314 OF THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976..... 4

II. THE OBJECTIVES OF SECTION 314 OF FLPMA FURTHER A LEGITIMATE STATE GOAL..... 9

III. THE RECORDING REQUIREMENTS OF SECTION 314 ARE REASONABLE AND RATIONALLY RELATED TO A LEGITIMATE STATE OBJECTIVE.....27

IV. THE THREE YEAR GRACE PERIOD PROVIDED BY SECTION 314 IS REASONABLE.....35

V. IF SECTION 314 IS INVALIDATED, THEN THE MARKETABLE TITLE ACTS OF 14 STATES AS WELL AS UCC 9-403 ARE UNCONSTITUTIONAL.....37

Page

A. Marketable Title Acts and § 314 of FLPMA Are Analogous..41

B. Article 9 of the UCC and § 314 of FLPMA Are Analogous.....45

VI. SECTION 314 IS NOT UNCONSTITUTIONAL BECAUSE IT CONTAINS A CONCLUSIVE PRESUMPTION.....47

VII. SINCE § 314 WAS AN EXERCISE OF THE POWER OF CONGRESS UNDER THE PROPERTY CLAUSE, DUE DEFERENCE SHOULD BE GIVEN TO CONGRESS' CHOICE OF MEANS TO EFFECTUATE A LEGITIMATE STATE PURPOSE..54

VIII. USE OF MINING CLAIMS DURING THE YEAR PRECEDING THE FAILURE TO RECORD IS NOT CONSTITUTIONALLY SIGNIFICANT IN LIGHT OF THE PURPOSES TO BE SERVED BY § 314.....57

CONCLUSION.....62

TABLE OF AUTHORITIES

Page

CASES

Best v. Stetson, 691 F.2d 42 (1st Cir. 1982).....64

Board of Education v. Miles, 15 N.Y.2d 364, 207 N.E.2d 181 (1965).....44

City of Boston v. Rockland Trust Co., 460 N.E.2d 1269 (Mass. 1984).....46

City of Miami v. St. Joe Paper Co., 364 So.2d 439 (1978).....44

Connecticut Mutual Life Ins. Co. v. Talbot, 113 Ind. 373, 14 N.E. 586 (1887).....40

Cooper v. Bell, 628 F.2d 1208 (9th Cir. 1980).....64

El Paso v. Simmons, 379 U.S. 497 (1965).....5

Farmer's Nat. Bank & Trust Co. v. Berks County R.E. Co., 333 Pa. 390, 5 A.2d 94 (1939).....40

First Nat. Bank v. Clark, 55 Kan. 219, 40 P. 270 (1895).....40

Frank v. James Talcott, Inc., 692 F.2d 734 (11th Cir. 1982).....46

Page

Heckler v. Comm. Health Services, Inc., ___ U.S. ___ (No. 83-56, May 21, 1984).....63

Hickel v. Oil Shale Corp., 400 U.S. 48 (1970).....26, 49, 59

Hopping v. Burnham, 2 Greene 39 (Iowa 1849)...40

In Re Willow Creek, 74 Or. 592, 144 P. 505 (1915)....47

Jackson v. Lamphire, 3 Pet. 280, 7 L.Ed. 679 (1830)...38

Kleppe v. New Mexico, 426 U.S. 529 (1976).....56

Light v. United States, 220 U.S. 523 (1911).....55

Locke v. United States, 573 F.Supp. 472 (D. Nev. 1983).....4, 37, 48, 63

Mahood v. Bessemer Properties, Inc., 154 Fla. 710, 18 So.2d 775 (1944).....40

Moore v. Chalmers-Galloway Live Stock Co., 90 Colo. 548, 10 P.2d 950 (1932)...40

Pacific Live Stock Co. v. Oregon Water Bd., 241 U.S. 441 (1916).....47

Payne v. Buena Vista Extract Co., 124 Va. 296, 98 S.E. 34 (1919).....40

Page

Pension Benefit Guaranty Corp. v. R. A. Gray and Co., ___ U.S. ___ (June 18, 1984).....7, 8

Presbytery of Southeast Iowa v. Harris, 226 N.W.2d 238 (Iowa), cert. denied, 423 U.S. 830 (1975).....44

Schweiker v. Hansen, 450 U.S. 785 (1981).....63

Stafford v. Lick, 7 Cal. 479 (1857).....40

Stanley v. Illinois, 405 U.S. 645 (1972).....51

Texaco, Inc. v. Short, 454 U.S. 516 (1982).....4, 5, 6, 7, 9, 33, 34, 35, 37, 38, 39, 53

United States v. Gratiot, 39 U.S. (14 Pet.) 526 (1840).....55

United States v. Ruby Co., 588 F.2d 697 (9th Cir. 1978), cert. denied, 442 U.S. 917 (1979).....64

United States v. San Francisco, 310 U.S. 16 (1940).....56

Usery v. Turner Elkhorn Mining Co., 428 U.S. 1 (1976).....7, 49, 50

Page

Vance v. Vance, 108 U.S. 514 (1883).....39

Vlandis v. Kline, 412 U.S. 441 (1973).....51

Weinberger v. Salfi, 422 U.S. 749 (1975).....51, 52

Western Mining Council v. Watt, 643 F.2d 618 (1981).....25, 26, 35

Wichelman v. Messner, 250 Minn. 88, 83 N.W.2d 800 (1957).....44

Woodstock Kenosha Health Center v. Schweiker, 713 F.2d 265 (7th Cir. 1983).....64

CONSTITUTIONAL PROVISIONS

Property Clause, Article IV, § 3.....54

STATUTES

Federal

16 U.S.C. § 1131 et seq.....15

16 U.S.C. § 1907.....60

30 U.S.C. § 21 et seq.....13, 26, 27, 59

Page

30 U.S.C. § 28.....26, 59

30 U.S.C. § 193.....49

30 U.S.C. § 501 et seq.....60

30 U.S..C § 521 et seq.....60

30 U.S.C. § 541 et seq.....60

30 U.S.C. § 601-604.....58

30 U.S.C. § 611.....58

30 U.S.C. § 621.....60

43 U.S.C. §§ 1391-1400.....27

43 U.S.C. § 1701 et seq.....passim

43 U.S.C. § 1711.....14, 56

43 U.S.C. § 1712.....15, 17, 56

43 U.S.C. § 1713.....16, 17, 57

43 U.S.C. § 1714.....16, 17, 54

43 U.S.C. § 1716.....16, 17, 57

43 U.S.C. § 1732.....13

43 U.S.C. § 1744.....2, 3, 4, 9, 10, 16, 31, 57

43 U.S.C. § 1761.....16, 17

43 U.S.C. § 1781.....13

43 U.S.C. § 1782.....13, 15

Page

State

Conn. Gen. Stat. § 47-33b et seq.....43

Fla. Stat. § 712.01 - 712.10.....43

Idaho Code Ann. §§ 42-1406-13.....47

Ill. Rev. Stat. Ch. 83, §§ 12.0 - 12.4.....43

Ind. Code § 32-1-5-1 et seq...43

Iowa Code § 614.17614.20.....43

Mich. Stat. Ann. §§ 565.101 - 565.109.....43

Minn. Stat. § 541.023.....43

Neb. Rev. Stat §§ 46-226.....47

Neb. Rev. Stat. § 76-288.....43

Nev. Rev. Stat. § 533,160 et seq.....47

N.C. Gen Stat. §§ 47B-1 - 47B-9.....43

N.D. Cent. Code §§ 47-19.1 -01.....43

Ohio Rev. Code Ann. §§ 5301.47 - 5301.56.....43

Okla. Stat. Tit. 16, § 71-81..43

Page

S.D. Comp. L. Ann. §§ 43-30-1 - 43-30-15.....43

Utah Code Ann. §§ 57-9-1 - 57-9-10.....43

Utah Code Ann. § 73-4-1 et seq.....47

Vt. Stat. Ann., Tit. 27, §§ 601-606.....43

Wash. Rev. Code §§ 90.03.110 et seq.....47

Wis. Stat. § 843.33.....43

Wyo. Stat. § 34-10-101 - 34-10-109.....43

Wyo. Stat. Ann. §§ 41-174.....47

REGULATIONS

43 CFR § 3610.2-1.....58

LEGISLATIVE MATERIALS

S. Rep. No. 94-583 (1975).....11, 12, 25, 29, 31

H. Rep. No. 94-1163 (1976)....11

S. Comm. Rep. accompanying S. 507.....24, 29

Pub. L. 96-30, 93 Stat. 1401..58

Pub. L. 96-59, 94 Stat. 3597..58

Page

Pub. L. 96-61, 94 Stat. 3598..58

Pub. L. 96-71, 94 Stat. 3615..58

MISCELLANEOUS

Article 9-403 of the Uniform Commercial Code.....3, 45, 46

P. Basye, Clearing Land Titles (2d Ed. 1970).....44

Dempsey, "Basic Problems in Locating Claims," 14 Rocky Mtn. Min. L. Institute, 573 (1968).....61

GAO, "Modernization of 1872 Mining Law Needed to Encourage Domestic Mining Production, Protect the Environment, and Improve Public Land Management," No. B-118678 (July 25, 1974).....24, 29, 30, 31

Note "The New Multiple-Use Mining Law," 20 Mont. L. Rev. 92 (1958).....30

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Page

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INTEREST OF AMICUS CURIAE

Amicus curiae Sierra Club is a non-profit corporation organized and existing under and by virtue of the laws of the State of California, having its principal place of business at 530 Bush Street, San Francisco, California 94108. The Sierra Club is a national conservation organization with approximately 352,000 members.

The objectives of the Sierra Club include conservation, the protection and sound management of natural resources, and the preservation and enhancement of the environment. The stated corporate purposes of the Sierra Club are:

> To enhance and protect by all lawful means the natural resources and human environment of the United States and the earth in general; to explore, enjoy, and preserve the scenic resources of the United States and its forests, waters, wildlife and wilderness; to undertake and to publish scientific, literary, and educational studies concerning them; to educate the people with regard to the national and state forests, parks, monu-

ments, and other natural resources of especial scenic beauty and to enlist public interest and cooperation in protecting them.

The Club's members pursue many diverse outdoor recreational pursuits on the public lands, including hiking, boating, nature study, and camping. These outdoor recreational pursuits are dependent in large measure on the effective performance by the Secretary of Interior of the public land management duties set forth in the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 et seq. If the mining recordation provisions of FLPMA are held constitutional, the Secretary will more effectively be able to manage the public lands to enhance and encourage outdoor recreational uses, as well as other multiple uses.

SUMMARY OF ARGUMENT

The objectives of § 314 of FLPMA further a legitimate state goal; the

recording requirements of § 314 are reasonable and rationally related to a legitimate state objective; and the three year grace period provided by § 314 is reasonable. If § 314 is invalidated, then the marketable title acts of 14 states as well as Article 9-403 of the Uniform Commercial Code (UCC) may be unconstitutional. Section 314 is not unconstitutional because it contains a conclusive presumption. Since § 314 was an exercise of the power of Congress under the Property Clause, due deference should be given to Congress' choice of means to effectuate a legitimate state purpose. Finally, use of the mining claim during the year preceding the failure to record is not constitutionally significant in light of the purposes to be served by § 314.

STATEMENT OF FACTS

Amicus curiae hereby adopts the Statement of Facts submitted by Appellant, United States.

ARGUMENT

I. THE COURT'S DECISION IN TEXACO, INC. v. SHORT SETS FORTH PRINCIPLES APPLICABLE TO DETERMINING THE CONSTITUTIONALITY OF SECTION 314 OF THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

The Court's decision in Texaco, Inc. v. Short, 454 U.S. 516 (1982),[1] is dispositive of the constitutionality of § 314 of the Federal Land Policy and Management Act of 1976 (FLPMA).[2] In that case the Court held constitutional an Indiana statute, not materially different from § 314 in its intent and effect, providing that a severed mineral interest that is not used for a period of twenty years automatically lapses and reverts to the current surface owner of the property unless the mineral owner files a statement

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1/ Texaco, Inc. v. Short, supra, was not cited by the trial court in its opinion invalidating § 314. Locke v. United States, 573 F.Supp. 472 (D. Nev. 1983).

2/ Pub. L. No. 94-579, Oct. 21, 1976, 90 Stat. 2743, § 101 et seq.

of claim in the local county recorder's office. The statute contained a two year grace period during which owners of mineral interests that were then unused and subject to lapse could preserve those interests by filing a claim in the recorder's office. The Indiana statute did not require the state to give any specific notice to a mineral owner prior to a statutory lapse of the mineral estate.[3]

The Court concluded that the Indiana legislature had not exercised its power in an arbitrary manner since the objectives of the statute and its implementation furthered a legitimate state goal. 454

3/ In El Paso v. Simmons, 379 U.S. 497 (1965), the Court also held constitutional a similar Texas statute that, upon the delinquent owner's failure to comply with statutory requirements, forfeited a right of redemption with respect to state school lands sold by the State of Texas. The attack on the constitutionality of the Texas statute was predicated upon an impairment of contracts argument under the Contracts Clause, Article 1, Section 10, rather than a due process argument.

U.S. at 529. In so concluding, the Court held:

> We have no doubt that, just as a State may create a property interest that is entitled to constitutional protection, the State has the power to condition the permanent retention of that property right on the performance of reasonable conditions that indicate a present intention to retain that interest.

454 U.S. at 526; emphasis added. Finally, the Court found that the Indiana statute, with a two year grace period, provided adequate notice. 454 U.S. at 532.

In upholding the Indiana statute, the Court applied a due process analysis[4/] that placed the burden upon the holder of the forfeited property interest to demonstrate the following in order to have the statute invalidated as unconstitutional:

4/ Though the Court ruled the Indiana statute constitutional by a 5-4 vote, the four dissenters disagreed with the majority only with respect to whether the notice given owners of mineral reservations by enactment of the statute comported with due process requirements. See 454 U.S. at 540.

a. the objectives of the statute must not further any legitimate state goal;

b. the recording requirements of the statute must be unreasonable, not rationally related to the effectuation of the legitimate state goal, and must impose more than insubstantial burdens on the owner relative to the clear benefits to the State;

c. a reasonable "grace" period must not have been provided.

In light of the Court's due process analysis in Texaco, Inc. v. Short,[5/] several aspects of § 314 must be emphasized. First, Congress enacted § 314

5/ Recently, the Court had occasion to apply similar due process analysis to a statute that was retroactive in application. In Pension Benefit Guaranty Corp. v. R. A. Gray and Co., ___ U.S. ___ (June 18, 1984), the Court reaffirmed its holding in Usery v. Turner Elkhorn Mining Co., 428 U.S. 1 (1976), that the strong deference accorded legislation in the field of national economic policy is no less applicable when that legislation is

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to facilitate implementation of the important public land management objectives set forth in FLPMA. One of FLPMA's objectives was to provide the Bureau of Land Management with current information about mining claims necessary to manage the public lands effectively and to engage in meaningful multiple use planning. See II, infra. Secondly, the recording requirements of § 314 are reasonable, rationally related to the objectives of the statute and impose insubstantial burdens on the claimant relative to the benefit to the United States,[6] in that recording requirements of a similar nature are already imposed by a variety of state laws. See III, infra. Finally, Congress afforded mining claimants a three year grace period after enactment of FLPMA to become familiar with and comply with the recording requirements of § 314. See IV, infra.

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applied retroactively. In Pension Benefit Guaranty Corp., the Court expressly reaffirmed the proposition that:

> Provided that the retroactive application of a statute is supported by a legitimate legislative purpose furthered by rational means, judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches.

____ U.S. at ____.

Since § 314 prescribes filing requirements that are prospective (though they apply to mining claims that antedate the enactment of the statute), the Court's approval of deference to the legislative judgment of Congress in the field of national economic policy should be equally applicable here.

II. THE OBJECTIVES OF SECTION 314 OF FLPMA FURTHER A LEGITIMATE STATE GOAL

43 U.S.C. § 1744(a) requires that the owner of a mining claim located prior to October 21, 1976 file either a notice of intention to hold the mining claim or an

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6/ Texaco, Inc. v. Short, supra, 454 U.S. at 529-30.

affidavit of assessment work with the Bureau of Land Management within a three-year grace period following October 21, 1976. Thereafter, a statement that the claim is being actively held must be filed on a yearly basis.[7] 43 U.S.C. § 1744(b) requires that a mining claimant file with the Bureau of Land Management a copy of the official record of the notice of location or certificate of location before October 21, 1979. 43 U.S.C. § 1744(c) provides that the failure to file such instruments shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

These provisions were enacted as part of the Federal Land Policy and Management Act, 43 U.S.C. § 1701 et seq., which is

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7/ That subsection also requires that the documents filed include a "description of the location of the mining claim sufficient to locate the claimed lands on the ground." 43 U.S.C. § 1744(a)(2).

the first comprehensive statutory guidance for the management of all federally owned lands and resources under the jurisdiction of the Bureau of Land Management.[8] Prior to the adoption of FLPMA, as many as 3000 separate laws promulgated over 170 years governed the management of the public lands.[9] The purpose of FLPMA was to provide "the first comprehensive, statutory statement of purposes, goals and authority for the use and management of about 448 million acres of federally owned lands administered by the Secretary of Interior through the Bureau of Land Management." S. Rep. No. 94-583 (1975), at 24.

8/ The Bureau of Land Management is the successor agency to the General Land Office. See Reorganization Plan No. 3, 5 U.S.C. App. 185 (1967). For a detailed history of the administration of the public lands prior to 1976 see S. Rep. No. 94-583 (1975), at 27-36.

9/ S. Rep. No. 94-583, supra, at 34-35; H. Rep. 94-1163 (1976) at 1.

Underlying all of FLPMA's provisions is the policy that public lands be retained in federal ownership, unless, as the result of land use planning, disposal is found to be in the public interest.[10] This policy is a dramatic departure from earlier laws enacted by Congress with respect to the public domain lands. The laws prior to FLPMA established the General Land Office, and later the Bureau of Land Management, as mere temporary custodians of the public domain, until the public lands could be transferred into private ownership.[11] S. Rep. No. 94-583 (1975), at 27-32.

10/ FLPMA § 102(a)(1), 43 U.S.C. § 1701(a)(1).

11/ FLPMA repeals most of the statutes providing for disposal of the public lands. See Pub.L. No. 94-579, §§ 702-706, 90 Stat. 2787-2794 (1976). Not repealed is the Mining Law of 1872, which authorizes transfer of fee simple title to federal land to locators of valuable minerals through issuance of a patent. 30

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In light of the intent of Congress that the public lands be retained, FLPMA gives the Secretary a new overall management mandate for the public lands, and confers duties in administering public land resources which must be harmonized with the authority conferred by other statutes relating to public land management, including the Mining Law of 1872, 30 U.S.C. § 21 et seq. Under FLPMA, the Secretary's administration of the public lands must be consistent with the principal policies set forth in § 102. One such policy requires that:

> the public lands be managed in a manner that will protect the

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U.S.C. § 21 et seq. FLPMA, however, amends the Mining law of 1872 in material respects and imposes certain management constraints on the conduct of mining operations on both unpatented mining claims and claims patented after 1976. 43 U.S.C. §§ 1732(b), § 1781, 1782. Section 314 itself constitutes an express amendment to the Mining Law of 1872. 43 U.S.C. § 1732(b).

> quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use.12/

Having declared in § 102(a)(2) that

> the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal and state planning efforts. . . .

43 U.S.C. § 1701(a)(2), Congress directed the Secretary to prepare and maintain a comprehensive inventory of all public lands and their resources. § 201(a), 43 U.S.C. § 1711(a). Based upon that inventory, the Secretary is directed to develop land use plans for the use of the public

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12/ 43 U.S.C. § 1701(a)(8).

lands. 43 U.S.C. § 1712(a). In the development and revision of land use plans, the Secretary is directed to consider both present and potential uses of the public lands. 43 U.S.C. § 1712(c)(5).

Additionally, the Secretary is required to review those roadless areas of five thousand acres or more on the public lands identified during the inventory required by § 201(a) as having wilderness characteristics as defined in the Wilderness Act, 16 U.S.C. § 1131 et seq., and to make recommendations to the President as to the suitability or non-suitability of each such area for preservation as wilderness, within 15 years of the enactment of FLPMA. 43 U.S.C. § 1782(a).13/

13/ The President, in turn, is to make his recommendations to Congress within two years of the receipt of the Secretary's report. 43 U.S.C. § 1782(b).

FLPMA also contains provisions authorizing sales and exchanges of the public lands, provided the Secretary determines it is no longer in the public interest to retain such lands. 43 U.S.C. §§ 1713, 1716. Title V of FLPMA, 43 U.S.C. § 1761 et seq., authorizes the Secretary, under specified conditions, to grant rights-of-way across the public lands. Section 204 of FLPMA, 43 U.S.C. § 1714, sets forth detailed provisions for the withdrawal of public lands from location under the Mining Law of 1872 and other disposal laws.

The purpose of § 314 of FLPMA, 43 U.S.C. § 1744, was to facilitate the accomplishment of the duties and to enable the exercise of the powers delegated to the Secretary described supra. Without detailed knowledge and information concerning the number, location, and current status of mining claims on the public

lands, the Secretary would be impaired in the ability to promulgate detailed plans for uses of the public lands, 43 U.S.C. § 1712; to execute sales and exchanges, 43 U.S.C. §§ 1713, 1716; to recommend wilderness areas to the President, 43 U.S.C. § 1782; to make reports to Congress concerning resource uses of withdrawn lands, 43 U.S.C. § 1714[14/] and to authorize rights of way across federal lands, 43 U.S.C. § 1761 et seq.

Additionally, the recording requirements of § 314 serve the national goal of stimulating the production of minerals from federal lands when it is in the public interest to do so. 43 U.S.C.

14/ Section 204(c)(2), 43 U.S.C. § 1714(c)(2), requires the Secretary, within three months after making withdrawals in excess of 5000 acres, to submit to Congress an inventory of the current natural resource uses of the withdrawn lands. This includes a report on known mineral deposits, past and present mineral production, and mining claims on the withdrawn area. 43 U.S.C. § 1714(c)(2)(12).

§ 1701(a)(12). Inactive claims are a serious impediment to legitimate mineral developers. Eliminating stale claims directly serves the interest of mineral production as well as other land management goals.15/

Such detailed knowledge and information concerning the number, location, and current status of mining claims on the public lands was not available to the Secretary at the time FLPMA was enacted. This lack of information was attributable to the manner in which the Mining Law of 1872 conferred possessory rights on locators of mining claims. Prior to FLPMA, it was difficult for the Secretary to become apprised of the location of mining claims, but in addition it was practically

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15/ See Strauss, "Rules, Adjudications, and Other Sources of Law in an Executive Department: Reflections on the Interior Department's Administration of the Mining Law," 74 Col. L. Rev. 1231, 1232-33 (1974).

impossible in many situations for the federal government to determine whether those claims were active or abandoned. The problem stems from the fact that the Mining Law of 1872 1) did not require any centralized federal filing,16/ and 2) notices of the performance of assessment work were either not required at all or only required pursuant to a variety of

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16/ The American Law of Mining summarizes this problem as follows:

> The act of location transfers possessory rights in the mineral lands of the United States from the government to the locator. The federal law conditions this transfer upon the discovery of minerals, but does not prescribe the formalities one would expect for divestment of its possessory title. It does not require that notice of appropriation be served on the grantor. Neither does it require a record of the private appropriation in any federal office, nor a writing of any kind to evidence the grant. It leaves the procedures of appropriation wholly to local custom and state law. . . .

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diverse state laws.[17] Thus § 314 of FLPMA sought to cure both problems: to require federal recordation of claim location and to require annual filings that demonstrate the claims are actively held.

In some states, mining claims are indexed by geographical area -- section, township, and range; elsewhere they may

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> Location procedures, originating in diverse local customs, have been fashioned more for the purpose of establishing priorities among competing prospectors than for the purpose of evidencing and confirming a grant of mining rights from the paramount federal proprietor. Present state laws, codifying these mining customs, are characteristically silent on notice and other usual conditions of grant. As a consequence, the possessory title to a mining claim is normally transferred from the United States to a private appropriator without the knowledge, donative intention or writing of the grantor.

American Law of Mining, § 5.48 (1982).

17/ American Law of Mining, § 7.4 (1982).

be filed with other real estate documents, or kept chronologically in a separate record book.[18] According to one commentator:

> Unless the locator applies to purchase the land, the federal government will be apprised of his claim only if its agents discover a record of it in the county files, or find traces of his workings on the ground. . . .

18/ The situation relating to filing notices of location in Utah is not atypical. According to the American Law of Mining:

> [T]he prevailing practice indicates that it is nearly impossible to determine whether a particular tract of land is subject to mining locations. The recorded notices are rarely entered in a tract index whether the land has been surveyed or not. Indexing is under the name of the locator or, more frequently, under the name of the claim. This mode of indexing renders it virtually impossible to discover whether a particular tract is subject to locations. Even if a location notice is discovered in the county records, the description actually refers to natural or permanent monuments and is not tied with accuracy to any public land survey. . . .

American Law of Mining, § 1.22 (1967).

> The simple and near-anonymous acts of location, then, create a cloud of some density on the government's title. Even if years have passed and little work has been done, the government's ability to devote the land to other uses may be compromised by the possibility that the locator or his heirs will reappear and reassert a right to the lands. If the claim is valid -- if a discovery was made and it cannot be shown that the claim has lapsed -- the locators will prevail.

Strauss, Mining Claims on Public Lands: A Study of Interior Department Procedures, 1974 Utah L. Rev. 185, 188-192 (1974).19/

19/ The same commentator concludes:

> The authors of the General Mining Law can hardly have intended to encumber public lands with such obscure yet tenacious claims. The Act provided that a miner might acquire a patent to his claim, fee simple title, on payment of a few dollars per acre and demonstration to the Department of the Interior that he had made a discovery and had invested at least $500 work in the development of his claim. Evidently, Congress believed that any serious claimant would quickly avail himself of this procedure,

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The legislative history of § 314 indicates that Congress clearly was aware of these two deficiencies in the 1872 Mining Law and intended to fashion a remedy.

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> and that the claims of the less serious would simply disappear, leaving no trace. But the passage of years without change in the statute has encumbered state and land records with several million unpatented claims. Over the same period, the possibility that the serious miner will seek to patent his claims has become remote. The application process has become increasingly complex, time consuming, and expensive. Miners are almost as well protected by the laws governing possession as they would be by a patent. Under well established policy, the Department does nothing to challenge the validity of claims unless they are presented for patent or the government immediately needs the lands involved. Since the Department does not distinguish between 'discovery' for the purpose of possession and the 'discovery' required to obtain a patent, it treats denial of a patent application for want of discovery as demonstrating the invalidity of the

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According to the Senate Committee report accompanying S. 507:

> There is no provision in the 1872 Mining Law, as amended, requiring notice to the Federal government by a mining claimant of the location of his claim. The Mining Law only required compliance with local recording requirements, which usually means simply an entry in the general county land records. Consequently, Federal land managers do not have an easy way of discovering which Federal lands are subject to either valid or invalid

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> underlying claim. This threat to the underlying claim places a premium on 'lying low' if any doubt whatever exists of its validity. Whatever Congress's original anticipation regarding the life of claims in unpatented status, their duration today is lengthy.

Strauss, Mining Claims on Public Lands, supra, at 192; footnotes omitted. A Report to Congress in 1974 notes that: "Over 59,000 mineral patents have been issued since implementation of the Mining Law of 1872. Most of these were issued before 1910; only 2,047 patents have been issued during the past 25 years." GAO, "Modernization of 1872 Mining Law Needed to Encourage Domestic Mining Production, Protect the Environment, and Improve Public Land Management," No. B-118678 (July 25, 1974).

> mining claim locations. According to some estimates, there are presently more than 6,000,000 unpatented claims in the public lands, excluding national forests . . . Of course, the vast majority of these claims will never be pursued, and do not directly interfere with land management. They do, however, create significant uncertainty regarding the actual extent of valid locations. Furthermore, as unpatented mining locations can be bought and sold, they have become the basis for many unauthorized occupancies on the public lands. These claims constitute a cloud on the title of a large portion of the Federal lands.

S. Rep. No. 94-583 (1975), at 64.

Without the reporting requirement imposed by § 314, the Secretary would not be able to determine number, location, and current status of mining claims on the public lands. This would interfere with the effective exercise of the land management duties prescribed by FLPMA, including the preparation of land use plans. As the Ninth Circuit noted in Western Mining Council v. Watt, 643 F.2d 618 (1981): "The purpose [of § 314] is

clearly not to impose a penalty for tardiness, but simply to free the public lands from stale claims in order to permit sound land use planning and management." 643 F.2d at 630.

In Hickel v. Oil Shale Corporation, 400 U.S. 48 (1970), the Court construed § 37 of the Mineral Lands Leasing Act of 1920, 30 U.S.C. § 193, to require any mining claims located prior to 1920 under the Mining Law of 1872, 30 U.S.C. § 21 et seq., to revert back to the United States if the locator failed substantially to comply with the mineral assessment requirements of 30 U.S.C. § 28. The objectives under the 1920 Act, according to the Court, were that:

> Congress reclaimed portions of the public domain so that land might be disposed of by a different procedure . . . or devoted to wholly different purposes within the purview of public policy as determined by Congress.

400 U.S. at 53-54. In enacting § 314 of FLPMA, Congress similarly intended that portions of the public domain, encumbered with stale mining claims, be devoted to different purposes, as prescribed in FLPMA.

III. THE RECORDING REQUIREMENTS OF SECTION 314 ARE REASONABLE AND RATIONALLY RELATED TO A LEGITIMATE STATE OBJECTIVE

As a result of the proliferation of mining claims on the public lands and a variety of other management problems, Congress, in 1964, created the Public Land Law Review Commission (PLLRC) under a broad mandate to study and make recommendations for the future of the public lands. 43 U.S.C. §§ 1391-1400 (1964). The PLLRC issued a report in June 1970, discussing, inter alia, the "many deficiencies" of the General Mining Law of 1872, 30 U.S.C. §§ 21 et seq. See One Third of the Nation's Land, A Report to the President and to the Congress by the

Public Land Law Review Commission at 121 (Washington, D.C. 1970) (PLLRC Report). One major deficiency noted was that "claims long since dormant remain as clouds-on-title, and land managers do not know where claims are located." PLLRC Report at 124.

The PLLRC recommended amendments to the General Mining Law of 1872, including: "a fair notice procedure (a) to clear the public lands of long-dormant claims, and (b) to provide the holders of existing mining claims an option to perfect." Id. at 129. The PLLRC Report continued:

> Under such a procedure failure to file proper notice of pre-existing claims within a reasonable time would constitute conclusive evidence of abandonment. This would be somewhat analogous to state quiet title actions and to surface right proceedings authorized by the Surface-Use Act of 1955. [30 U.S.C. §§ 611-15]. Clearing the record of an estimated 5.5 million long-dormant claims would assist in achieving more efficient land planning and management by Federal agencies.

PLLRC Report at 130. This report served as a starting point for much of Congress' work in drafting FLPMA.

S. 507, introduced in 1975, addressed the concerns of the PLLRC. The Senate Committee report accompanying S. 507, which contained the version of § 314 ultimately enacted into law, noted specifically that:

> A particularly difficult and chronic land management problem for all public lands subject to mining concerns 'stale claims' under the 1872 Mining Law is the lack of a central record keeping system for claims and patents. Title III contains a provision that would remove the stale claims and establish that record keeping system.

S. Rep. No. 94-583 (1975), at 26.[20/] Part

20/ Further evidence of the fact that the vast majority of unpatented mining claims were inactive was provided to Congress by a study done by the General Accounting Office in 1974. GAO, "Modernization of 1872 Mining Law Needed to Encourage Domestic Mineral Production, Protect the Environment, and Improve Public Land Management," No. B-118678 (July 25, 1974).

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of the Committee report addresses the remedy for those problems that was embodied in § 314. The text of the Committee report notes:

> Subsection (a) would establish the recording system so necessary for Federal land planners and managers. . . . Any claim not recorded is to be conclusively presumed abandoned and will be void. . . .

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GAO investigators visited 240 randomly selected mining claims in four states. Only one was being mined, and only three showed any evidence that mineral production had ever occurred. Id. at 8. The GAO also noted that: "Practicality has dictated a certain laxness in insuring that unpatented mining claims meet the discovery requirement." Id. at 9. The report outlined the "time-consuming and costly actions needed to identify and clear the titles to dormant mining claims." Id. at 20-23. GAO concluded: "Improvements are needed in the procedures for reporting and recording mining activity carried out on public land so that Federal land management agencies can properly monitor and control use of public lands." Id. at 21. See also Note "The New Multiple-Use Mining Law," 20 Mont. L. Rev. 92, 94 (1958) (estimating that only 2% of mining claims were producing minerals and only 15% had ever produced minerals).

> . . . As such, its purpose is to advise the Federal land managing agency, as proprietor, of the existence of mining claims. . . .

S. Rep. No. 94-583 (1975) at 64, 65.

Section 314(a) imposes an obligation on the mining claimant to file a statement each year that the claim is being actively held, in addition to filing the notice of location required within three years after the passage of FLPMA. 43 U.S.C. § 1744(a). Congress was aware that millions of mining claims had been located on the public lands[21/] and realized that although the 1979 filing requirement would weed out many of those claims, substantial numbers would be recorded with the Bureau in

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21/ The 1974 Report to Congress by the GAO states: "The total number of mining claims on federal land is unknown, but Interior estimated that between 1872 and 1962 six million claims were filed." Report to Congress, supra, note 20 at 1.

1979.[22/] Mindful of the fact that the Bureau of Land Management administers over 174,074,398 acres of public domain and acquired land in 37 states, as well as 166,984,847 acres in Alaska,[23/] with minimum manpower to make on the ground inspections of its lands, Congress required the annual filings to ensure that there would be available to the Bureau, for land use management planning purposes, an up-to-date record of active mining claims. The Bureau did not, and still does not, have the manpower or funds to investigate on

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22/ In fact, 1,269,863 notices of location were filed pursuant to § 314 in 1979. U.S. Dept. of Interior, Bureau of Land Management, Public Land Statistics, Table 78, 1980. However, by the end of fiscal year 1983 1,792,861 claims had been recorded. U.S. Dept. of Interior, Bureau of Land Management, Public Statistics Table 76, 1984.

23/ U.S. Dept. of Interior, Bureau of Land Management, Public Land Statistics, Table 9 (1984).

the ground activity with respect to each mining claim recorded in 1979 to determine whether that claim remains active.

Thus the annual filing requirement, with which respondents failed to comply, is a reasonable means to further legitimate state goals. Although it imposes minimal burdens on claimants[24/] (since many already were required to file documents of present intention to hold their claims under state laws), the annual filings enable the Bureau to perform its FLPMA duties with up-to-date information concerning active claims, despite the constraints imposed by limited manpower and funding in proportion to the millions

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24/ In Texaco, Inc. v. Short, 454 U.S. at 529-30, the Court stated:

> The State surely has the power to condition the ownership of property on compliance with conditions that impose such a slight burden on the owner, while providing such clear benefits to the State.

of claims for which filings were made in 1979 and subsequent years.

The recording requirements are thus legitimate means to further Congress' purpose to clear clouds on the title to federal lands and provide the Bureau with current information on the status of mining claims. Existing mining claims are protected under FLPMA provided the owner manifests a present intention to hold the claim[25/] by filing the requisite documents within three years after passage of the Act and on an annual basis thereafter with the Bureau of Land Management. Where no such present intention is manifested by recordation, the claim is forfeited. The Bureau is thereby enabled to fulfill its

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25/ See Texaco, Inc. v. Short, 454 U.S. at 529 (". . . the State has the power to condition the permanent retention of that property right on the performance of reasonable conditions that indicate a present intention to retain that interest").

statutory duties to manage the public lands in the manner prescribed by FLPMA. As the Ninth Circuit held in Western Mining Council v. Watt, 643 F.2d 618 at 629 (1981), the filing requirements of § 314 are "neither an arbitrary nor irrational way of realizing these permissible governmental objectives."

IV. THE THREE YEAR GRACE PERIOD PROVIDED BY SECTION 314 IS REASONABLE

In Texaco, Inc. v. Short, 454 U.S. at 532, the Court approved a statute with a two year grace period. In so holding, the Court stated:

> Generally, a legislature need do nothing more than enact and publish the law, and afford the citizenry a reasonable opportunity to familiarize itself with its terms and to comply. In this case, the two-year grace period included in the Indiana statute forecloses any argument that the statute is invalid because mineral owners may not have had an opportunity to become familiar with its terms. It is well established that persons owning property within a State are charged with knowledge of relevant

> statutory provisions affecting the control or disposition of such property.
>
> It is also settled that the question whether a statutory grace period provides an adequate opportunity for citizens to become familiar with a new law is a matter on which the Court shows the greatest deference to the judgment of state legislatures.

The Court should similarly defer to the judgment of Congress that a three year grace period is sufficient. Moreover, as early as 1968, the American Mining Congress, the principal hardrock industry trade association was aware of proposals for and endorsed a federal recordation system. In a statement submitted to the Public Land Law Review Commission,[26] the Council noted that existing law provided no way "for clearing the public domain of an estimated 5.5 million abandoned mining claims except by expensive contest proceedings." It recommended that Congress provide "that a mining claim is conclusively presumed abandoned" if some notice is not filed periodically. Clearly, the affected industry was on notice concerning the likelihood of federal filing requirements being imposed.[27]

26/ American Mining Council, "The Mining Industry and the Public Lands," at 22 (January 11, 1968).

V. IF SECTION 314 IS INVALIDATED, THEN THE MARKETABLE TITLE ACTS OF 14 STATES AS WELL AS UCC 9-401 ARE UNCONSTITUTIONAL

In sustaining the constitutionality of the Indiana statute in Texaco, Inc. v. Short, the Court analogized the Indiana statute to a "typical recording statute,"

27/ The Lockes must also certainly have been on actual notice of the requirements of § 314 of FLPMA, as evidenced by their prior compliance with its provisions. Locke v. United States, 573 F.Supp. at 474.

454 U.S. at 528,[28/] and noted that it had held such statutes constitutional on numerous occasions. For example, in Jackson v. Lamphire, 3 Pet. 280, 7 L.Ed. 679 (1830), the Court upheld the constitutionality of a recording statute. In so doing, it stated:

> It is within the undoubted power of state legislatures to pass recording acts, by which the elder grantee shall be postponed to a younger, if the prior deed is not recorded within the limited time; and the power is the same whether the deed is dated before or after the passage of the recording act. . . . The time and manner of their operation, the exceptions to them, and the acts from which the time limited shall begin to run, will generally depend on the sound discretion of the legislature, according to the nature of titles, the situation of the country, and the emergency which leads to their enactment.

3 Pet. at 290. Summarizing these earlier decisions, the Court concluded:

28/ "Such statutes provide that a valid transfer of property may be defeated by a subsequent purported transfer if the earlier transfer is not properly recorded." 454 U.S. at 528.

> In each case, the Court upheld the power of the State to condition the retention of a property right upon the performance of an act within a limited period of time. In each instance, as a result of the failure of the property owner to perform the statutory conditon, an interest in fee was deemed as a matter of law to be abandoned and to lapse.

Texaco, Inc. v. Short, 454 U.S. at 529.[29/]

29/ See also Vance v. Vance, 108 U.S. 514 (1883), holding constitutional a Louisiana statute requiring the recording of tacit mortgages and providing for a grace period of almost ten months for existing mortgages to be recorded. Failure to record would make the mortgage unenforceable. In Vance, the Court ruled:

> The right of the State to prescribe the time within which existing rights shall be prosecuted, and the means by and conditions on which they may be continued in force, is, we think, undoubted. Otherwise, where no term of prescription exists at the inception of a contract, it would continue in perpetuity, and all laws fixing a limitation upon it would be abortive. Now, it is elementary that the State may establish, alter, lengthen, or shorten the period of prescription of existing rights, provided that a reasonable time be given in future for complying with the statute.

108 U.S. at 517.

Similarly, state courts have consistently held that recording statutes which subordinate or render unrecorded instruments invalid may apply to pre-existing instruments without violating any constitutional provision, provided that a reasonable time is given the holders of such instruments to comply with the provisions of the statute.10/

10/ See, e.g., Bopping v. Burnham, 2 Greene 39 (Iowa 1849); Stafford v. Lick, 7 Cal. 479 (1857); Connecticut Mutual Life Ins. Co. v. Talbot, 113 Ind. 373, 14 N.E. 586 (1887); First Nat. Bank v. Clark, 55 Kan. 219, 40 P. 270 (1895); Payne v. Buena Vista Extract Co., 124 Va. 296, 98 S.E. 34 (1919); Moore v. Chalmers-Galloway Live Stock Co., 90 Colo. 548, 10 P.2d 950 (1932); Mahood v. Bessemer Properties, Inc., 154 Fla. 710, 18 So.2d 775 (1944) (statute held constitutional requiring that existing contracts for the purchase of land be filed or recorded withing six months to preserve the owner's interest). Cf. Farmer's Nat. Bank & Trust Co. v. Berks County R.E. Co., 333 Pa. 390, 5 A.2d 94 (1939) (statute held unconstitutional where grace period was only 2½ months).

Section 314 requires the holder of a potential or actual existing property interest to undertake certain statutorily defined procedures within a prescribed period of time to preserve that interest. And, like many typical recording statutes and the Indiana Mineral Lapse statute, § 314 applies to property interests in existence prior to its enactment. Consequently, any determination that § 314 is unconstitutional will cast a cloud over other similar recording statutes. Two such statutes are the marketable title acts currently adopted in 14 states and certain provisions of Article 9 of the Uniform Commercial Code (UCC) currently in force in all fifty states and the Virgin Islands.

A. Marketable Title Acts and Section 314 of FLPMA Are Analogous

Marketable title acts provide that certain property interests in existence at

the time of passage of the Act, whether or not presently actionable, must be periodically rerecorded in order to prevent extinction of the interest. An interest that is not recorded or rerecorded within the statutory period is considered "null and void." The holder of the property interest is required to take a simple mandatory precaution against extinction, analogous to typical recording statutes and § 314 of FLPMA. As stated in J. Scurlock, Retroactive Legislation Affecting Interests in Land, 82-83 (1953):

> Most of the [marketable title] statutes enacted to date provide for the preservation of existing old interests by recordation. This is simple and easy. If the owner fails to take this step, he has only himself to blame if his interest is extinguished. The constitutionality of imposing this duty would seem to have been settled beyond question by the decisions sustaining retroactive recording statutes.

Fourteen states have enacted marketable title legislation.[31/] Most of the state acts are fashioned after the Model Marketable Title Act.[32/] The Model Marketable Title Act provides that any person claiming an unrecorded interest in land may preserve his interest by filing, within a prescribed period, a notice in writing setting forth the nature of his claim. Section 4. If the required filing is not made, the interest is extinguished.

31/ Conn. Gen. Stat. § 47-33b et seq.; Fla. Stat. § 712.01 - 712.10; Ill. Rev. Stat. Ch. 83, §§ 12.0 - 12.4; Ind. Code § 32-1-5-1 et seq.; Iowa Code § 614.17-614.20; Mich. Stat. Ann. §§ 565.101-565.109; Minn. Stat. § 541.023; Neb. Rev. Stat. § 76-288; N.C. Gen Stat. §§ 47B-1 - 47B-9; N.D. Cent. Code §§ 47-19.1-01; Ohio Rev. Code Ann. §§ 5301.47-5301.56; Okla. Stat. Tit. 16, § 71-81; S.D. Comp. L. Ann. §§ 43-30-1 - 43-30-15; Utah Code Ann. §§ 57-9-1 - 57-9-10; Vt. Stat. Ann., Tit. 27, §§ 601-606; Wis. Stat. § 843.33; Wyo. Stat. § 34-10-101 - 34-10-109.

32/ The full text of the Model Marketable Title Act is set out in J. Winokur, American Property Law, 1169-72 (1982).

Section 3. A usual grace period under marketable title acts is one year.[33] The purpose of marketable title legislation is to clear public records of stale claims. The effect of extinguishing stale claims is to lend certainty to land transfers by limiting the scope of title searches, simplifying and making the public records more reliable. See P. Basye, Clearing Land Titles (2d Ed. 1970).[34]

33/ Section 314 allows claimants three years to become familiar with the procedure necessary to preserve their interests.

34/ The constitutionality of state marketable title acts has been upheld in three states where constitutional attacks have been launched. See Wichelman v. Messner, 250 Minn. 88, 83 N.W.2d 800 (1957); Presbytery of Southeast Iowa v. Harris, 226 N.W.2d 238 (Iowa), cert. denied, 423 U.S. 830 (1975). Most recently, in City of Miami v. St. Joe Paper Co., 364 So.2d 439 (1978), the Florida Supreme Court held that a retroactive recording statute required only adequate notice by means of a reasonable grace period to comply with the due process requirements. Amicus has discovered only one reported case holding a marketable title act unconstitutional. See Bd. of Educ. v. Miles, 15 N.Y.2d 364, 207 N.E.2d 181 (1965).

B. Article 9 of the UCC and § 314 of FLPMA Are Analogous

Article 9 of the UCC contains a recording provision, UCC 9-403, that operates to extinguish a secured creditor's priority unless the security interest is affirmatively recorded within a statutorily prescribed time. Section 9-403 provides in relevant part:

> [A] filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five year period unless a continuation statement is filed prior to lapse. . . . Upon lapse the security interest becomes unperfected, unless it is perfected without filing. . . .

This provision generally applies to valid existing interests as of the time of enactment with varying grace periods for the holder of the interest to become familiar with and comply with the statute. UCC § 10-101, 10-102. A loss of priority under UCC 9-403 against an insolvent debtor

effectively causes extinguishment of the interest.

No court has directly considered the constitutionality of UCC 9-403, though the UCC has been enacted in 50 states. However, numerous courts have enforced the lapse of a secured creditor's interest under that section. See, e.g., Frank v. James Talcott, Inc., 692 F.2d 734 (11th Cir. 1982); City of Boston v. Bankland Trust Co., 460 N.E.2d 1269 (Mass. 1984).

A decision by this court that § 314 of FLPMA is unconstitutional would throw into doubt the constitutionality of numerous other statutes that states have enacted to accomplish the same purposes envisioned by FLPMA -- clearing the public record of stale claims, and promoting reliable, usable records systems.35/

35/ This could also extend to states' provisions for recording water rights. In

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VI. SECTION 314 IS NOT UNCONSTITUTIONAL BECAUSE IT CONTAINS A CONCLUSIVE PRESUMPTION

The district court held that § 314 was unconstitutional because it contains an

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1916, the Court sustained the constitutionality of an Oregon statute that extinguished any riparian water right that was not affirmatively asserted and adjudicated through the state water agency. The Court found the statute constitutional even though the decree issued by the water agency, subject to ratification by the state courts, was "conclusive as to all prior rights and the rights of all existing claims." Pacific Live Stock Co. v. Oregon Water Bd., 241 U.S. 441, 445 (1916). The Court reasoned that:

> Water rights, like all other rights, are subject to such reasonable regulations as are essential to the general welfare, peace and good order of the citizens of the state . . . however absolute and unqualified his right thereto.

Id. at 449, quoting In Re Willow Creek, 74 Or. 592, 144 P. 505 (1915). Numerous other western states have enacted statutes similar to that at issue in Pacific Live Stock Co.. See, e.g., Idaho Code Ann. §§ 42-1406-1; Nebr. Rev. Stat. §§ 46-226; Nev. Rev. Stat. § 533, 160 et seq.; Utah Code Ann. 73-4-1 et seq.; Wash. Rev. Code §§ 90.03.110 et seq.; Wyo. Stat. Ann. §§ 41-174.

irrebuttable presumption, not always true in fact, that failure to record a mining claim constitutes abandonment. Locke v. United States, supra, 573 F.Supp. at 478. However, virtually all recording statutes either explicitly or sub silencio contain irrebuttable presumptions. A failure to record renders the property interest unenforceable against more junior intererts and works, in effect, a forfeiture of that interest. Marketable title acts are predicated on the assumption that unrecorded interests have been "abandoned" though they are not couched in the language of irrebuttable presumptions.

Section 314(c) states explicitly what is implicit in all recording statutes -- that failure to record constitutes de jure abandonment.[16/] Congress could, however,

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16/ In § 314(c) Congress did not intend to create an irrebuttable presumption of de

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have just as well framed § 314 in terms of a sanction instead of conclusive presumption, by providing in § 314(c) that failure to record would extinguish the claim, or render it void or unenforceable.

In Usery v. Turner Elkhorn Mining Co., 428 U.S. 1 (1976), the Court held constitutional a statute with an irrebuttable presumption that a miner who was clinically diagnosable as gravely ill with pneumonoconiosis arising out of coal mine employment was eligible for black lung benefits under the Social Security Act. In examining the "operational" effects of the irrebuttable presumption, the Court stated:

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facto abandonment. It only intended that failure to record the documents required by §§ 314(a)-(b) would result in reversion of the possessory interest to the United States; hence, de jure abandonment. See 30 U.S.C. § 193, as construed in Nickel v. Oil Shale Corp., supra, 400 U.S. 48.

> Were the Act phrased simply and directly to provide that operators were bound to provide benefits for all miners clinically demonstrating their affliction with complicated pneumonoconiosis arising out of employment in the mines, we think it clear that there could be no due process objection to it.

428 U.S. at 23. The Court held that since the statute could have been drafted in such manner as to accomplish its result without language of irrebuttable presumption, its constitutionality should be analyzed under the normal due process analysis to be given economic legislation.[37/]

37/ According to the Court:

> But in a statute such as this, regulating purely economic matters, we do not think that Congress' choice of statutory language can invalidate the enactment when its operation and effect are clearly permissible.

428 U.S. at 24-25.

In Weinberger v. Salfi, 422 U.S. 749 (1975), the Court rejected an argument that a provision of the Social Security Act, relating to widows' benefits, was unconstitutional because it contained an irrebuttable presumption. Characterizing the irrebuttable presumption test of constitutionality employed by the Court in earlier cases[38/] as a "virtual engine of destruction for countless legislative judgments which have heretofore been thought wholly consistent with the Fifth and Fourteenth Amendments to the Constitution," 422 U.S. at 773, the Court described how that doctrine could wreak havoc with a simple limitations period in a statute:

> For example, the very section of Title 42 which authorizes an action such as this, § 405(g), requires

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38/ Stanley v. Illinois, 405 U.S. 645 (1972); Vlandis v. Kline, 412 U.S. 441 (1973).

that a claim be filed within 60 days after administrative remedies are exhausted. It is indisputable that this requirement places people who file their claims more than 60 days after exhaustion in a different 'class' from people who file their claims within the time limit. If we were to follow the District Court's analysis, we would first try to ascertain the congressional 'purpose' behind the provision, and probably would conclude that it was to prevent stale claims from being asserted in court. We would then turn to the questions of whether such a flat cutoff provision was necessary to protect the Secretary from stale claims, whether it would be possible to make individualized determinations as to any prejudice suffered by the Secretary as the result of an untimely filing, and whether or not an individualized hearing on that issue should be required in each case. This would represent a degree of judicial involvement in the legislative function which we have eschewed except in the most unusual circumstances, and which is quite unlike the judicial role mandated by Dandridge, Belcher, and Weaver, as well as by a host of cases arising from legislative efforts to regulate private business enterprises.

422 U.S. at 774-75.

If § 314 is unconstitutional on the basis of the strict scrutiny test inherent in the irrebuttable presumption test applied by the trial court, 573 F.Supp. at 478, then statutes of limitations that foreclose the assertion of claims that accrued prior to the enactment of such statutes would be cast into constitutional limbo. See Texaco, Inc. v. Short, supra, 454 U.S. at 527-28. Since such statutes of limitations contain an implicit conclusive presumption that claims filed after the statutory period expires are unenforceable because they are stale, they cannot be distinguished for purposes of applying the irrebuttable presumption doctrine, from statutes (such as § 314) providing that notices filed after the statutory period expires void certain claims or interests.

VII. SINCE § 314 WAS AN EXERCISE OF THE POWER OF CONGRESS UNDER THE PROPERTY CLAUSE, DUE DEFERENCE SHOULD BE GIVEN TO CONGRESS' CHOICE OF MEANS TO EFFECTUATE A LEGITIMATE STATE PURPOSE

In enacting § 314 of FLPMA Congress exercised its power under the Property Clause, Article IV, § 3, which provides that "[t]he Congress shall have the power to dispose of and make all needful rules and regulations respecting the Territory or other Property belonging to the United States." Section 314 is such a regulation respecting the retention of interests in lands belonging to the United States, and providing for a reversion of such interests to the United States in the event of non-compliance with the recording requirements it imposes.[39/] As such, Congress is owed

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39/ Unless withdrawn from entry under the Mining Law of 1872 pursuant to 43 U.S.C. § 1714, such lands remain subject to location (with respect to locatable minerals)

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substantial deference not only in its choice of means to effectuate a constitutionally appropriate end, but also because strict scrutiny is especially inappropriate when Congress has exercised a property clause power to regulate economic uses of the public lands.

In United States v. Gratiot, 39 U.S. (14 Pet.) 526, 537 (1840), the Court held: "[C]ongress has the same power over [lands] as over any other property belonging to the United States; and this power is vested in [C]ongress without limitation; and has been considered the foundation upon which the territorial governments rest." Light v. United States, 220 U.S. 523, 536-37 (1911) further held that "[t]he United

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by other mining claimants, who could obtain possessory interests and, ultimately, patent to the lands upon proof of a valuable mineral discovery. See n. 41, infra.

States can prohibit absolutely or fix the terms on which its property may be used." In Kleppe v.New Mexico, 426 U.S. 529, 539 (1976), the Court declared that "while the furthest reaches of the power granted by the Property Clause have not yet been definitively resolved, we have repeatedly observed that '[t]he power over the public land thus entrusted to Congress is without limitations.' U.S. v. San Francisco, 310 U.S. 16, 29 (1940)."

The grant of power to Congress under the Property Clause is therefore expansive, allowing Congress to fulfill its function as steward over the public lands. Though exercise of that power is subject to the Due Process Clause, substantial deference is due to Congress' determination that the periodic and systematic inventory of public lands, 43 U.S.C. § 1711, land use planning, 43 U.S.C. § 1712, and sales or exchanges of the public lands, 43

U.S.C. §§ 1713, 1716, as well as other management functions authorized by FLPMA,[40] could not be effectively accomplished without up-to-date records of the status of mining claims on federal lands, as provided for in 43 U.S.C. § 1744.

VIII. USE OF MINING CLAIMS DURING THE YEAR PRECEDING THE FAILURE TO RECORD IS NOT CONSTITUTIONALLY SIGNIFICANT IN LIGHT OF THE PURPOSES TO BE SERVED BY § 314

Though the result in this particular case seems severe,[41] the plight of the

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40/ Facilitating mineral production is another purpose of FLPMA. 43 U.S.C. § 1701(a)(12). Section 314 facilitates mineral leasing with respect to minerals subject to the Mineral Leasing Act of 1920, 30 U.S.C. § 181 et seq. See pp. 17-18, supra.

41/ On the facts of this case it appears that appellees actually have a producing gravel mine on their claims. But should the court be inclined to weigh the equities involved in voiding their claim by upholding the constitutionality of § 314, a few pertinent facts must be noted. First, appellees failed to file in compliance with the unambiguous statutory

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appellees is no worse than that of the holder of any mineral reservation, future interest, right of reverter, or security

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deadline. Second, appellees could have, any time after they located their claims, filed an application for patent and, upon obtaining patent, would have avoided entirely the need for compliance with § 314, since that section applies only to the holders of unpatented claims. Third, appellees may, even now, be able to relocate their claims if the gravel they were mining is an "uncommon variety" within the meaning of 30 U.S.C. § 611. Fourth, even if the gravel is a common variety and thus no longer open to claim location under the Mining Law (see 30 U.S.C. § 611), the deposit can be purchased from the federal government pursuant to 30 U.S.C. § 601-604. Though such sales must ordinarily be made after competitive bidding, the Secretary is authorized to negotiate sales without competition under certain conditions. See 30 U.S.C. § 602(a); 43 CFR § 3610.2-1. Fifth, as others in similar circumstances have done, appellees can seek legislative relief through a private bill. See, e.g., Pub. L. 96-61, 94 Stat. 3598; Pub. L. 96-59, 94 Stat. 3597; Pub. L. 96-71, 94 Stat. 3615; Pub. L. 96-30, 93 Stat. 1401. Sixth, and most important, the significant public interest in ridding the public lands of stale claims outweighs an occasional result of arguable inequity, in the same way any statutory limitation does.

interest in realty or chattels who loses a property interest because of failure to record. That appellees actually worked their claims during the year preceding their failure to record constitutionally should not be a determining factor in light of the purpose of the annual filing requirement of FLPMA.[42/] Whereas before enactment of § 314, miners were in jeopardy of forfeiting their claims to the United States or to third party locators if the annual assessment work was not performed,[43/] § 314 makes the annual filing

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42/ The requirement of performing annual assessment work arises from the Mining Law of 1872. 30 U.S.C. 21 et seq. The 1872 Mining Law, however, permits each state to decide whether to enact laws requiring assessment work notification and other related matters. 30 U.S.C. § 28. Those states that require the filing of notices that assessment work has been performed usually intended such filings to provide third parties with notice that a claim was being worked to preclude relocation by a third party.

43/ See Hickel v. Oil Shale Corporation, supra, 400 U.S. at 54.

requirement with the federal government a condition necessary to maintain a continuing possessory interest in the lands of the United States.44/ As explained supra, this filing requirement was imposed to ensure up-to-date information concerning mining claims on the public lands. Because of the limitations of the manpower

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44/ Other filing requirements have been imposed by Congress. Section 8 of the Act of September 28, 1976, 16 U.S.C. § 1907, provided that all mining claims which lie within the boundaries of units of the National Park System must be recorded with the Secretary of the Interior within one year after the effective date of the Act, or be forfeited. The Mining Claims Rights Restoration Act of 1955, 43 U.S.C. § 621, provided that the owner of a mining claim located on lands which were, after such location, withdrawn for power development or power sites, must file for record a copy of the location notice of the claim in the United States district land office of the land district in which the claim is situated within one year after August 11, 1955. The Act of August 12, 1953, 30 U.S.C. § 501 et seq., the Multiple Mineral Development Act of 1954, 30 U.S.C. §§ 521 et seq., and the Uraniferous Lignite Act of 1955, 30 U.S.C. § 541 et seq., provided for the recording of certain mining claims also.

of the Bureau of Land Management and the vast expanse of the public domain, Congress placed the onus on the locators to make the filings. Thus, Congress required an objective manifestation of intent to pursue the claim. For this purpose, "use" without filing would be insufficient to satisfy the statutory objectives of notifying the United States that the claim remained active so that the claim would be taken into account in land management planning and other activities of the Bureau of Land Management.45/

45/ Finally, it is factually of constitutional significance in assessing the effects of § 314 on existing property interests that though unpatented mining claims are a constitutionally protected form of property so long as a discovery of a valuable mineral deposit has been made and maintained and the other statutory requirements have been satisfied, unpatented mining claims without a discovery do not constitute property interests against the United States. Most existing mining claims are undoubtedly of the latter character. See Dempsey, "Basic Problems in Locating Claims," 14 Rocky Mtn. Min. L. Institute, 573, 586-87 (1968).

CONCLUSION

For the foregoing reasons, amicus curiae, Sierra Club, requests the Court to reverse the judgment below.[46/]

Respectfully submitted,

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46/ The District Court failed to consider whether the United States may have been equitably estopped from forfeiting the Lockes' claim under § 314. If this Court

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is so inclined, it could avoid the constitutional issues presented to it by vacating the judgment of the District Court and remanding this matter to the District Court for a determination as to whether the doctrine of equitable estoppel is applicable.

Since there appears to be evidence in the record that a member of the Locke family, Laura, inquired personally at a local Bureau of Land Management office about the procedure for filing an assessment notice and was told by an employee of the Bureau of Land Management to file the assessment notice at the Reno office "on or before December 31, 1980," Locke v. United States, 573 F. Supp. at 472, the trial court could have examined this evidence to determine whether the Bureau of Land Management's advice equitably estopped the government from denying the Locke's claim.

Although it has recognized that the doctrine of equitable estoppel against the government should be used sparingly, the Court has refused to adopt a "flat rule that estoppel may not in any circumstances run against the government." Heckler v. Comm. Health Services, Inc., ___ U.S. ___ (No. 83-56, May 21, 1984). In fact, the Court has indicated that the doctrine should be reserved for the case in which a private party loses a vested or contingent right. Id. See also, Schweicker v. Hansen, 450 U.S. 785, 790 (1981) (denying estoppel because government misconduct did not cause party to take action that could

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not be corrected at any time). Thus, under appropriate circumstances, the doctrine of equitable estoppel is available against the United States. Woodstock Kenosha Health Center v. Schweiker, 713 F.2d 285 (7th Cir. 1983); Best v. Stetson, 691 F.2d 42, 44 (1st Cir. 1982); Cooper v. Bell, 628 F.2d 1208 (9th Cir. 1980) (holding that an equitable extension might be available when the government's misinformation caused a party to miss a filing deadline that is equivalent to a statute of limitations); United States v. Ruby Co., 588 F.2d 697, 702 (9th Cir. 1978), cert. denied, 442 U.S. 917 (1979).

APPELLANT'S

BRIEF

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No. 83-1394 (5)

In the Supreme Court of the United States

OCTOBER TERM, 1984

UNITED STATES OF AMERICA, ET AL., APPELLANTS

v.

MADISON D. LOCKE, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

BRIEF FOR THE APPELLANTS

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QUESTIONS PRESENTED

1. Whether Section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1744, violates the Due Process Clause of the Fifth Amendment to the extent it provides that failure to file a timely notice of intention to hold a mining claim or affidavit of annual assessment work shall be deemed conclusively to constitute an abandonment of the claim.

2. Whether Section 314 is satisfied by "substantial compliance" with its requirements, so that appellees retained their mining claims by filing one day late.

PARTIES TO THE PROCEEDING

In addition to the parties listed in the caption, the United States Department of the Interior; William P. Clark, Secretary of the Interior; the Bureau of Land Management; and Robert F. Burford, Director of the Bureau of Land Management, are appellants; and Rosalie E. Locke, Sam Buccambuso, and Tony Buccambuso are appellees.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Constitutional, statutory, and regulatory provisions involved	2
Statement	2
Summary of argument	11
Argument:	
I. Section 314(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1744(c), is consistent with the Due Process Clause of the Fifth Amendment	14
A. Congress has the power to condition retention of an unpatented mining claim located on federal land on a claimant's compliance with the filing requirements of Section 314	15
B. Section 314(c) is consistent with the requirements of procedural due process	23
C. Section 314(c) does not create an impermissible irrebuttable presumption of abandonment	35
II. Appellees did not retain their mining claims by filing one day late, because Section 314 is not satisfied by "substantial compliance" with its requirements	42
Conclusion	49
Appendix	1a

TABLE OF AUTHORITIES

Cases:

Alabama v. *Texas*, 347 U.S. 272 16
Anderson Nat'l Bank v. *Luckett*, 321 U.S. 233 ..... 25, 29-30

Cases—Continued: Page

Andrus v. *Charlestone Stone Products Co.*, 436 U.S. 604 44
Belk v. *Meagher*, 104 U.S. 279 23
Best v. *Humboldt Placer Mining Co.*, 371 U.S. 334 .. 17, 23, 24
Block v. *North Dakota ex rel. Bd. of University & School Lands*, No. 81-2337 (May 2, 1983) 26, 29
Bradford v. *Morrison*, 212 U.S. 389 23
Browder v. *Director, Illinois Dep't of Corrections*, 434 U.S. 257 30
Cameron v. *United States*, 252 U.S. 450 ..... 23, 24, 29
City of El Paso v. *Simmons*, 379 U.S. 479 ..... 22, 30
Dep't of Banking v. *Pink*, 317 U.S. 264 30
Ernst & Ernst v. *Hochfelder*, 425 U.S. 185 44
FCIC v. *Merrill*, 332 U.S. 380 ..... 25, 43
Fedorenko v. *United States*, 449 U.S. 490 45
FHA v. *The Darlington, Inc.*, 358 U.S. 84 22
Forbes v. *Gracey*, 94 U.S. 762 ..... 17, 23
FPC v. *Idaho Power Co.*, 344 U.S. 17 16
Gibson v. *Chouteau*, 80 U.S. (13 Wall.) 92 16
Griggs v. *Provident Consumer Discount Co.*, 459 U.S. 56 30
Heckler v. *Community Health Services*, No. 83-56 (May 21, 1984) 43
Hickel v. *Oil Shale Corp.*, 400 U.S. 48 ..... 10, 14, 47
Ickes v. *Virginia-Colorado Development Corp.*, 295 U.S. 639 ..... 47, 48
Ivanhoe Irrigation Dist. v. *McCracken*, 357 U.S. 275 16
Jackson v. *Lamphire*, 28 U.S. (3 Pet.) 280 30
Kleppe v. *New Mexico*, 426 U.S. 529 16
Lambert v. *California*, 355 U.S. 225 ..... 33, 34
MacDonald v. *Best*, 186 F. Supp. 217 19
Merrion v. *Jicarilla Apache Tribe*, 455 U.S. 130 22
Montoya v. *Gonzales*, 232 U.S. 375 30
Mourning v. *Family Publications Service, Inc.*, 411 U.S. 356 39
Muliane v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306 35
North Laramie Land Co. v. *Hoffman*, 268 U.S. 276 .. 25
Pension Benefit Guaranty Corp. v. *R.A. Gray & Co.*, Nos. 83-245 and 83-291 (June 18, 1984) 22

Cases—Continued: Page

Ramoco, Inc. v. *Andrus*, 649 F.2d 814, cert. denied, 454 U.S. 1032 44
Rogers v. *United States*, 575 F. Supp. 4, on rehearing, No. CV-80-114-H (D. Mont. June 15, 1983) .. 10, 30, 32, 33, 41, 44
Soper v. *Lawrence Bros.*, 201 U.S. 359 29
Terry v. *Anderson*, 95 U.S. 628 ..... 26, 29
Texaco, Inc. v. *Short*, 454 U.S. 516 ..... *passim*
Topaz Beryllium Co. v. *United States*, 479 F. Supp. 309, aff'd, 649 F.2d 775 ..... 4, 8, 20, 47
United States v. *Balint*, 258 U.S. 250 34
United States v. *California*, 332 U.S. 19 16
United States v. *Dotterweich*, 320 U.S. 277 34
United States v. *Freed*, 401 U.S. 601 34
United States v. *San Francisco*, 310 U.S. 16 16
United States v. *Union Pacific R.R.*, 353 U.S. 112 .... 37, 44
United States Railroad Retirement Board v. *Fritz*, 449 U.S. 166 42
United States Trust Co. v. *New Jersey*, 431 U.S. 1 .. 22
Usery v. *Turner Elkhorn Mining Co.*, 428 U.S. 1 ..... 22, 37, 39
Utah Power & Light Co. v. *United States*, 243 U.S. 389 16
Vlandis v. *Kline*, 412 U.S. 441 ..... 9, 13, 35, 36, 37, 38, 39
Watt v. *Western Nuclear, Inc.*, No. 81-1686 (June 6, 1983) 3, 7, 16
Weinberger v. *Salfi*, 422 U.S. 749 ..... 38, 39
Western Mining Council v. *Watt*, 643 F.2d 618, cert. denied, 454 U.S. 1031 22
Wilbur v. *United States ex rel. Krushnic*, 280 U.S. 306 ..... 17, 23, 47, 48
Wilson v. *Iseminger*, 185 U.S. 55 ..... 26, 30

Constitution, statutes, regulations and rule:

U.S. Const:
Art. I, § 10, Cl. 1 (Contract Clause) 16, 22
Art. IV, § 3, Cl. 2 (Property Clause) 16
Amend. V (Due Process Clause) 11, 14, 22, 24, 39
Amend. XIV 24, 39
Act of Aug. 11, 1955, ch. 797, § 4, 69 Stat. 683, 30 U.S.C. 623 19

Constitution, statutes, regulations and rule—Continued:

	Page
Common Varieties Act of 1955, 30 U.S.C. 611	3, 7
Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, 90 Stat. 2743, codified at 43 U.S.C. (& Supp. V) 1701 *et seq.*	2
§ 102(a)(2), 43 U.S.C. 1701(a)(2)	18
§ 203, 43 U.S.C. 1713	19
§ 310, 43 U.S.C. 1740	43
§ 314, 43 U.S.C. 1744	*passim*
§ 314(a), 43 U.S.C. 1744(a)	*passim*
§ 314(b), 43 U.S.C. 1744(b)	*passim*
§ 314(c), 43 U.S.C. 1744(c)	*passim*
General Mining Act of 1872, ch. 152, 17 Stat. 91 *et seq.*, codified at 30 U.S.C. 22 *et seq.*	2, 16
30 U.S.C. 26	2, 3, 16
30 U.S.C. 28	2, 10, 17, 20, 47, 48
30 U.S.C. 29	3, 17
Mineral Lands Leasing Act, 30 U.S.C. 181 *et seq.*	3
30 U.S.C. 188(b)	44
30 U.S.C. 188(c)	44
30 U.S.C. 188(f)	44
30 U.S.C. 193	3, 49
U.C.C. § 9-302 (1977)	30
U.C.C. § 9-403(2) (1972)	30
26 U.S.C. 6651(a)(1)	30
28 U.S.C. 2101	30
28 U.S.C. 2101(a)	10
30 U.S.C. 601 *et seq.*	3
30 U.S.C. 615	3
43 U.S.C. 853	18
44 U.S.C. 1507	43
43 C.F.R. Subpt. 3833:	
Section 3833.0-5(m)	6
Section 3833.2-1(b)(1)	6, 43, 3a
Section 3833.4(a)	6, 3a
Fed. R. App. P. 4	30

Miscellaneous:

	Page
122 Cong. Rec. (1976):	
p. 4039	37
p. 4052	37
47 Fed. Reg. 56305 (1982)	6
H.R. Rep. 94-1163, 94th Cong., 1st Sess. (1976)	34, 36, 45
H.R. Rep. 94-1724, 94th Cong., 2d Sess. (1976)	46
Note, *The Irrebuttable Presumption Doctrine in the Supreme Court*, 87 Harv. L. Rev. 1534 (1974)	39
Note, *Irrebuttable Presumptions: An Illusory Analysis*, 27 Stan. L. Rev. 449 (1975)	39
Public Land Law Review Commission, *One Third of the Nation's Land: A Report to the President and to the Congress* (1970)	3, 4
Public Land Policy and Management Act of 1975: Hearings on H.R. 5224 and H.R. 5622 Before the Subcomm. on Public Lands of the House Comm. on Interior and Insular Affairs, 94th Cong., 1st Sess. (1975)	37
S. Rep. 94-583, 94th Cong., 1st Sess. (1975)	3, 4, 34, 46
2A C. Sands, *Statutes and Statutory Construction* (4th ed. 1973)	43
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Sherwood, *Mining-Claim Recordation and Prospecting Under the Federal Land Policy and Management Act of 1976*, 23 Rocky Mtn. Min. L. Inst. 1 (1977)	42
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In the Supreme Court of the United States

OCTOBER TERM, 1984

No. 83-1394

UNITED STATES OF AMERICA, ET AL., APPELLANTS

v.

MADISON D. LOCKE, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

BRIEF FOR THE APPELLANTS

OPINIONS BELOW

The opinion of the district court (J.S. App. 1a-13a) is reported at 573 F. Supp. 472. The opinion of the Interior Board of Land Appeals (J.S. App. 16a-21a) is reported at 65 I.B.L.A. 122.

JURISDICTION

The judgment of the district court (J.S. App. 14a) was entered on October 24, 1983. A notice of appeal (J.S. App. 15a) was filed on November 21, 1983. On January 10, 1984, Justice Rehnquist extended the time for docketing an appeal to and including February 21, 1984, and the Jurisdictional Statement was filed on that date. Probable jurisdiction was noted on June 4, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. 1252. See J.S. 19 n.20.

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

The relevant constitutional, statutory, and regulatory provisions are set out in App., *infra*, 1a-4a.

STATEMENT

1. The Federal Land Policy and Management Act of 1976 (FLPMA or the Act), Pub. L. No. 94-579, 90 Stat. 2743 (codified at 43 U.S.C. (& Supp. V) 1701 *et seq.*), made significant changes in the law governing federal land management. FLPMA represented a comprehensive effort by Congress to modernize public land laws and to solve a number of longstanding problems in the area of federal land policy. Among these problems were the lack of centralized information about mining claims on federal lands and the unresolved status of the very large number of stale claims.

a. Under the general mining laws, 30 U.S.C. 22 *et seq.*, United States citizens may go on unappropriated, unreserved public lands in order to prospect for and develop certain minerals. An individual who locates a mining claim has the right of exclusive possession of the land for mining purposes and may extract and sell minerals he finds there without paying any royalty to the United States. 30 U.S.C. 26. After making a valuable mineral "discovery," the claimant may hold the land indefinitely, provided he expends $100 per year in assessment work on his claim. 30 U.S.C. 28. If he fulfills certain statutory conditions (including performance of $500 of development work), the claimant may obtain a patent (*i.e.*, purchase the land and minerals) for a nominal sum; however, he is not required to proceed to patent. Until the claimant obtains a patent, para-

mount title to the land remains in the United States. See 30 U.S.C. 29. Since enactment of the general mining laws in the nineteenth century, Congress has removed a number of minerals from their coverage.[1] In doing so, however, it generally has left valid existing claims intact. See, *e.g.*, 30 U.S.C. 193; 30 U.S.C. 615; *Watt* v. *Western Nuclear, Inc.*, No. 81-1686 (June 6, 1983), slip op. 20-21 & n.15.

Prior to the passage of FLPMA, significant problems had developed as a result of the existence of numerous mining claims located on federal lands, combined with the absence of any federal recording system for such claims. Most states imposed recording requirements applicable to mining claims (as authorized by 30 U.S.C. 26), but there was no general federal requirement that a mining claimant record an unpatented mining claim or otherwise notify the Interior Department of the existence of the claim. By the mid-1970s it was estimated that there were more than six million unpatented mining claims on public lands other than national forests; in addition, more than half of the land in the National Forest System was thought to be covered by such claims. S. Rep. 94-583, 94th Cong., 1st Sess. 65 (1975). Many of the claims were believed to be stale. *Ibid.* See also Public Land Law Review Commission, *One Third of the Nation's Land: A Report to the President and to the Congress* 130 (1970). However, as the Senate committee explained, because of the ab-

[1] See 30 U.S.C. 181 *et seq.* (oil, gas, oil shale, coal, and other energy and fertilizer minerals); 30 U.S.C. 611 (sand, gravel, and other building and construction minerals). The minerals on public lands that Congress has removed from the coverage of the general mining laws are now generally subject to leasing or other contractual arrangements. See 30 U.S.C. 181 *et seq.*; 30 U.S.C. 601 *et seq.*

sence of a federal recording requirement, "Federal land managers do not have an easy way of discovering which Federal lands are subject to either valid or invalid mining claim locations." S. Rep. 94-583, *supra*, at 65. See also *One Third of the Nation's Land*, *supra*, at 124 ("land managers do not know where claims are located"); *Topaz Beryllium Co.* v. *United States*, 479 F. Supp. 309, 312 (D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1981).

The potential existence of unknown mining claims made it difficult for federal land managers to take actions affecting federal lands for fear of interfering with the rights accorded to claimants under the federal mining laws. Each time the Bureau of Land Management proposed a sale or other conveyance of federal land, it was necessary to make a lengthy search of records in the county recorder's office and to produce a title abstract showing the existence or nonexistence of outstanding mining claims. Such searches in themselves constituted a major administrative burden. Moreover, if the county records indicated the existence of mining claims—even what appeared to be only stale or abandoned claims—it was necessary for BLM to initiate a formal administrative adjudication to determine the validity of the claims before proceeding further with the proposed action. See Strauss, *Mining Claims on Public Lands: A Study of Interior Department Procedures*, 1974 Utah L. Rev. 185, 193, 215-219.

b. In Section 314 of FLPMA, 43 U.S.C. 1744, Congress set out the basis for a federal recordation system that would serve the dual purpose of ridding federal lands of stale mining claims and providing federal managers with data that would allow them to make informed land management decisions. Section 314 includes two kinds of reporting requirements. Subsection (a) establishes an annual filing obligation. It requires the owner of an unpatented mining claim located prior to October 21, 1976, within three years of that date and "prior to December 31, of each year thereafter," to file with BLM a notice of intention to hold the claim or an affidavit of assessment work performed on the claim. Those who locate claims after October 21, 1976, must make such filings "prior to December 31 of each year" following the calendar year in which the claim was located. The second obligation—an initial recordation requirement—is imposed by Section 314(b): The owner of an unpatented claim located prior to October 21, 1976, must, within three years of that date, file with BLM a copy of the official record of the notice of location or certificate of location. Those who locate claims after October 21, 1976, must file the required documents within 90 days of location.[8]

In Section 314(c)—the provision at issue in this case—Congress provided that failure to comply with the filing requirements of Section 314(a) and (b) results in the invalidation of a mining claim. Section 314(c) states that, except in certain enumerated circumstances,[9] "[t]he failure to file such instru-

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[8] Both subsection (a) and subsection (b) require an initial submission by October 1979 in the case of claims located prior to October 21, 1976. However, only subsection (a) requires annual filings thereafter. For ease of reference, we will refer to subsection (a) as the annual filing requirement and to subsection (b) as the initial recordation requirement. This case involves the failure to make a timely annual filing required by subsection (a).

[9] Section 314(c) provides that it shall not be considered a failure to file "if the instrument is defective or not timely filed for record under other Federal laws permitting filing or

ments as required by subsections (a) and (b) of this section shall be deemed conclusively to constitute an abandonment of the mining claim * * * by the owner."

c. The Department of the Interior has issued regulations implementing Section 314. 43 C.F.R. 3833.2-1(b)(1) provides that the owner of an unpatented mining claim located on federal land must file evidence of annual assessment work or a notice of intention to hold the claim in the proper BLM office "on or before December 30 of each calendar year." Since 1982, the Department's regulations have provided that filings due on or before December 30 will be considered timely filed if they are postmarked on or before December 30 and received by BLM by the close of business on the following January 19th. 43 C.F.R. 3833.0-5(m).[4] Under 43 C.F.R. 3833.4(a), the failure to file a required instrument within the prescribed time period "shall be deemed conclusively to constitute an abandonment of the mining claim * * * and it shall be void."

BLM enters into a central computer information from both initial recordations and annual filings submitted pursuant to Section 314. Every 60 days BLM prints out the information on mining claims on a state-by-state basis. The computer printouts are microfilmed and distributed to BLM State Offices, to many state governments, and to private subscribers.

2. Appellees were mining claimants whose ten unpatented claims were located on federal land in Ne-

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recording thereof, or if the instrument is filed for record by or on behalf of some but not all of the owners of the mining claim."

[4] This amendment was prompted by the overload on the United States Postal Service caused by holiday mail during the latter part of December. See 47 Fed. Reg. 56305 (1982).

vada. Since 1960 appellees have produced gravel and building materials from these claims.[5] On October 19, 1979, appellees complied with the initial filing requirements under Section 314 by filing the appropriate documents for each of their claims. However, in 1980 appellees waited until December 31 to hand deliver their affidavits of annual assessment work to the BLM Nevada State Office, thus missing the December 30 deadline set by statute and regulation for the annual filing. J.S. App. 1a-2a. On April 4, 1981, the chief of the Records and Data Management Branch of the BLM Nevada State Office informed appellees that their claims had been declared abandoned and void because they had failed to file a notice of intent or proof of assessment work by December 30, 1980. See J.S. App. 22a-24a.[6]

Appellees sought review of the BLM action, claiming, inter alia, that they had been erroneously advised by unnamed BLM personnel as to the proper filing date and that Section 314 and the implementing regulations are unconstitutional and invalid be-

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[5] Appellees located their claims in 1952 and 1955, prior to the effective date of the Common Varieties Act of 1955, 30 U.S.C. 611, which prospectively withdrew common varieties of building and construction minerals from the coverage of the general mining laws. See page 3 & note 1, *supra*; *Watt* v. *Western Nuclear, Inc.*, slip op. 20-21 n.18.

[6] The form letter appellees received (J.S. App. 22a-24a) advised them that they could relocate their claims subject to valid intervening rights of third parties or the United States. In fact, appellees may not relocate their claims because common varieties of sand and gravel have been withdrawn from the coverage of the general mining laws. See note 5, *supra*.

The appendix to the Jurisdictional Statement reproduces the letter sent to appellee Madison D. Locke, J.S. App. 22a-24a. The other three appellees received identical letters.

cause they resulted in the taking of appellees' property without notice and opportunity to be heard. In June 1982 the Interior Board of Land Appeals (IBLA) affirmed the BLM determination (J.S. App. 16a-21a). The IBLA concluded that any reliance on erroneous information provided by a BLM employee could not relieve a claimant of an obligation imposed by statute or regulation. It declined to rule on appellees' constitutional claim on the ground that the Department of the Interior was not a proper forum to consider the constitutionality of Section 314. The IBLA noted, however, that the regulations at issue had been upheld as consistent with the statute in *Topaz Beryllium Co.* v. *United States*, 479 F. Supp. 309 (D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1981). The IBLA went on to conclude that the administrative appeal afforded to appellees before the initial BLM determination became final satisfied the requirements of due process.

3. Appellees filed this action in the United States District Court for the District of Nevada, seeking review of the IBLA decision. Appellees asserted, inter alia, that BLM's action was unconstitutional and invalid because it resulted in taking of their property without notice and opportunity to be heard and without compensation. Appellees sought a declaration that Section 314 and the implementing regulations are unconstitutional and an order permanently enjoining appellants from enforcing the regulations against appellees.

The district court granted summary judgment for appellees, holding that Section 314 is an "unconstitutional violation of procedural due process insofar as it creates an irrebuttable presumption of abandon-

ment for failure to timely file the annual assessment notice" required by Section 314(a) (J.S. App. 10a).[7] The court initially concluded that unpatented mining claims qualify as property interests sufficient to warrant due process protection (*id.* at 3a). It then determined that Section 314 creates a forfeiture of appellees' claims, since appellees had not indicated any intent to abandon the claims (J.S. App. 3a-4a).[8] Applying the analysis set out in *Vlandis* v. *Kline*, 412 U.S. 441 (1973), the district court determined that extinguishment of claims pursuant to Section 314 amounts to a taking without due process because the statute creates a conclusive presumption of abandonment that is "not necessarily or universally true in fact" (J.S. App. 5a) and because, in the court's view, there are reasonable methods by which BLM could establish whether a miner intends to abandon a claim when he fails to make a timely annual filing (*id.* at 6a-7a). The court concluded that BLM could easily determine whether claimants had in fact abandoned their claims by notifying them of their failure to meet a filing deadline and by holding a preforfeiture hearing in cases in which there is a dispute about whether abandonment has occurred (*id.* at 7a, 9a-10a).

The district court went on to hold (J.S. App. 10a-12a) that even if appellees had not been deprived of their due process rights, they would still prevail because they had "substantially complied" with Section 314 by submitting the required notices one day after

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[7] The court did not address appellees' request for an injunction against enforcement of Interior Department regulations.

[8] The court noted (J.S. App. 5a-6a) that during the 1979-1980 assessment year appellees produced over $1,000,000 worth of gravel and sand from their claims.

the statutory deadline. In the court's view, the primary purpose of Section 314 is to clear federal lands of stale claims, which is accomplished by requiring the initial filing of location notices pursuant to Section 314(b); the requirement of annual filings thereafter (under Section 314(a)) is intended to facilitate maintenance of a current index of unpatented claims "merely for the convenience of federal land managers" (J.S. App. 11a). Thus, according to the court, a standard of substantial compliance with the annual filing deadline would be consistent with the history and purpose of Section 314 (J.S. App. 12a). In addition, the court cited *Hickel* v. *Oil Shale Corp.*, 440 U.S. 48, 57 (1970), and several earlier cases for the proposition that substantial compliance satisfies the assessment work requirement under 30 U.S.C. 28. The court reasoned that it would be anomalous for the government to insist on strict compliance with Section 314 when, at the same time, substantial compliance is sufficient under 30 U.S.C. 28. J.S. App. 12a.[9]

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[9] The United States District Court for the District of Montana has declared Section 314(c) unconstitutional in a case involving invalidation of claims based on failure to record timely notices of location required by Section 314(b). *Rogers* v. *United States*, 575 F. Supp. 4 (1982). The court in *Rogers* applied an irrebuttable presumption analysis similar to that employed by the district court in this case. *Id.* at 9-11. However, the court in *Rogers* rejected the contention that substantial compliance is sufficient to satisfy Section 314. 575 F. Supp. at 8-9. The government did not seek review of the judgment in *Rogers* because it failed to file a notice of appeal to this Court within the 30-day time limit set by 28 U.S.C. 2101(a).

SUMMARY OF ARGUMENT

I. The district court erred in holding unconstitutional Section 314(c) of the Federal Land Policy and Management Act, 43 U.S.C. 1744(c), which provides that failure to file a timely notice of intention to hold a mining claim or affidavit of annual assessment work shall be "deemed conclusively" to constitute an abandonment of the claim. Contrary to the court's conclusion, Section 314(c) is fully consistent with the Due Process Clause of the Fifth Amendment.

A. Congress clearly has the power to condition retention of an unpatented mining claim located on federal land on a claimant's compliance with the filing requirements of Section 314. Congress possesses broad constitutional authority to manage and control the mineral resources of the public domain. Mining claims located on public lands are the product of Congress's exercise of that authority and are subject to continuing regulation.

Section 314 serves significant governmental purposes. The filing requirements of Section 314(a) and (b) provide the means for collection of complete, up-to-date information about the status of mining claims, which in turn permits federal managers to make informed land use decisions. Automatic invalidation of claims pursuant to Section 314(c) following claimants' failure to comply with the filing requirements provides an efficient mechanism for termination of stale claims. It also provides an important incentive for compliance with the filing requirements and allows federal managers to be certain about the status of claims. At the same time, Section 314 imposes only minimal burdens on claimants.

This Court concluded in *Texaco, Inc* v. *Short*, 454 U.S. 516 (1982), that Indiana clearly had the power

to condition retention of a property right in privately held lands on filing within a limited period of time under its Mineral Lapse Act. *A fortiori* Congress has authority to impose such a condition with respect to claims located on federal lands.

B. Section 314(c) is consistent with the requirements of procedural due process. The Court's holding in *Texaco* v. *Short* makes it clear that the district court here erred in concluding that claimants must receive individual notice and a hearing before their claims become invalid for failure to comply with the Section 314 filing requirements. The statute itself provides notice of the filing deadlines and the consequences of failure to meet them. The three-year grace period between enactment and the effective date of the statute afforded claimants a reasonable time within which to become familiar with the new provisions. Of course, there is no question that appellees in this case were aware of Section 314, since they previously had made a timely initial recordation pursuant to that section.

Following their apparent failure to make their 1980 annual filing in a timely manner, appellees were notified and given an opportunity to appeal to the Interior Board of Land Appeals the BLM determination that their claims were invalid. That proceeding, in which appellees were free to submit any evidence that they had in fact complied with Section 314, was sufficient to satisfy due process requirements. BLM is not constitutionally required also to provide notice to claimants before the self-executing feature of Section 314 may operate. See *Texaco* v. *Short*, 434 U.S. at 536-537.

C. The district court erred in holding that Section 314(c) creates an impermissible irrebuttable presumption of abandonment under the analysis of *Vlandis* v. *Kline*, 412 U.S. 441 (1973). The forfeiture accomplished by Section 314(c) does not depend on any presumption that a claimant who fails to comply with the filing requirements in fact has abandoned his claim. Rather, Congress has merely provided in effect that failure to comply with the filing requirements will result in extinguishment of a claim. More recent decisions of this Court suggest that it would be entirely inappropriate to apply the *Vlandis* analysis in a manner that would invalidate the rational legislative choice reflected in Section 314. Even if the *Vlandis* analysis could properly be applied to this case, provision of individual notice and a hearing in which a claimant would have the opportunity to establish nonabandonment is not a "reasonable" alternative to the approach chosen by Congress, since such procedures could interfere significantly with BLM's ability to manage federal lands effectively.

II. The district court erred in its alternative holding that Section 314(a) is satisfied by "substantial compliance," so that appellees retained their mining claims by filing their affidavits of annual assessment work one day late. Nothing in the language of Section 314 suggests that a claimant may retain his claim by filing later than the precise deadline specified in the statute. Congress's failure expressly to permit late filing in Section 314, despite its provision for certain other exceptions, reinforces the conclusion that it did not intend to sanction deviations from the statutory deadlines. The legislative history does not provide support for a substantial compliance standard. In addition, permitting less than total compliance with the statute is at odds with Congress's

goal of enabling BLM to obtain complete, up-to-date information about the status of mining claims on federal lands and to administer those lands efficiently.

The district court erred in relying on *Hickel* v. *Oil Shale Corp.*, 400 U.S. 48 (1970), and other cases in which this Court has stated that substantial compliance is enough to satisfy the annual assessment work requirement under the general mining laws. In view of the differences between Section 314 and the provisions at issue in the assessment work cases, the reasoning of those cases clearly does not extend to Section 314.

ARGUMENT

I. SECTION 314(c) OF THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976, 43 U.S.C. 1744(c), IS CONSISTENT WITH THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

As part of its major revision of the public land laws in 1976, Congress conditioned the right to retain an unpatented mining claim located on federal land on a claimant's compliance with certain filing requirements. Section 314(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1744(c), provides that a failure to comply with the requirements of subsections (a) and (b) of Section 314 shall be "deemed conclusively to constitute an abandonment" of a claim. Section 314(a) requires annual filing of either a notice of intention to hold a claim or an affidavit of assessment work, while Section 314(b) requires an initial recordation of a notice or certificate of location. Both subsections include specific deadlines for filing of the required documents. In this case appellees in 1980 failed to file affidavits of annual assessment work for their claims "prior to December 31," as required by Section 314(a). Following appellees' failure to make a timely filing, the Bureau of Land Management declared their claims invalid, and the Interior Board of Land Appeals affirmed.

The district court, in reviewing the determination of invalidity, held that Section 314(c) constitutes an "unconstitutional violation of procedural due process insofar as it creates an irrebuttable presumption of abandonment for failure to timely file the annual assessment notice" required by Section 314(a) (J.S. App. 10a). In fact, as we show below, the condition Congress imposed is a reasonable one that is clearly within its power and fully consistent with due process. Contrary to the district court's holding, Section 314(c) does not create any impermissible irrebuttable presumption. The district court's use of the irrebuttable presumption analysis to invalidate the rational legislative judgment reflected in Section 314 is plainly wrong.

A. Congress Has the Power to Condition Retention of an Unpatented Mining Claim Located on Federal Land on a Claimant's Compliance With the Filing Requirements of Section 314

As a preliminary matter, it is clear that Congress possesses authority to condition retention of an unpatented mining claim located on federal land on a claimant's compliance with the Section 314 filing requirements.[10] Of course, Congress's power to manage

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[10] Appellees did not raise below the question of congressional authority to enact Section 314; the district court also did not refer to that issue. However, this Court in *Texaco* v. *Short*, 454 U.S. 516, 525-530 (1982), concluded that it was appropriate to consider such an issue before addressing constitutional challenges based on procedural due process.

and control the mineral resources of the public domain is very broad. The Property Clause of the Constitution, Art. IV, § 3, Cl. 2, provides that "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." This Court has repeatedly stated that " '[t]he power over the public land thus entrusted to Congress is without limitations.' " *Kleppe* v. *New Mexico*, 426 U.S. 529, 539 (1976) (quoting *United States* v. *San Francisco*, 310 U.S. 16, 29 (1940)). See also *Ivanhoe Irrigation Dist.* v. *McCracken*, 357 U.S. 275, 294-295 (1958); *Alabama* v. *Texas*, 347 U.S. 272, 273 (1954); *FPC* v. *Idaho Power Co.*, 344 U.S. 17, 21 (1952); *United States* v. *California*, 332 U.S. 19, 27 (1947); *Gibson* v. *Chouteau*, 80 U.S. (13 Wall.) 92, 99 (1872). The Property Clause gives Congress the power over public lands " 'to control their occupancy and use, to protect them from trespass and injury and to prescribe the conditions upon which others may obtain rights in them.' " *Kleppe* v. *New Mexico*, 426 U.S. at 540 (quoting *Utah Power & Light Co.* v. *United States*, 243 U.S. 389, 405 (1917)).

The mining claims to which Section 314 applies are creations of Congress's exercise of that broad constitutional authority. The right to obtain such claims was conferred under the General Mining Act of 1872, ch. 152, 17 Stat. 91 *et seq.*, which opened "all valuable mineral deposits in lands belonging to the United States * * * to exploration and purchase." Under that statute an individual who locates a claim obtains a right of possession that allows him to remove and sell minerals without any payment to the United States. 30 U.S.C. 26. See *Watt* v. *Western Nuclear, Inc.*, No. 81-1686 (June 6, 1983), slip op. 14. The

right to retain a claim is conditioned on, inter alia, discovery of a valuable mineral deposit and performance of $100 of assessment work each year. 30 U.S.C. 28. Failure of a claimant to perform the required assessment work entitles others to relocate the claim. A claimant who meets various statutory requirements (including performance of $500 of development work) and who tenders a nominal sum is entitled to a patent, which confers ownership rights to the land and minerals. 30 U.S.C. 29. Until a patent is obtained, however, the United States retains paramount title to the land. See 30 U.S.C. 29; *Best* v. *Humboldt Placer Mining Co.*, 371 U.S. 334, 336 (1963); *Wilbur* v. *United States ex rel. Krushnic*, 280 U.S. 306, 316-317 (1930); *Forbes* v. *Gracey*, 94 U.S. 762, 763 (1876).

As the product of legislative action pursuant to Congress's constitutional power to regulate federal lands, a mining claim located on such lands is clearly subject to Congress's continuing authority to impose statutory conditions on its retention. See *Best* v. *Humboldt Placer Mining Co.*, 371 U.S. at 339 ("The United States, which holds the legal title to the lands, plainly can prescribe the procedure which any [mining] claimant must follow to acquire rights in the public sector"). That authority unquestionably extends to the filing requirements of Section 314, which serve significant governmental interests.

As we explained in the statement (at 3-4), Congress had multiple purposes in enacting Section 314. It wished to rid federal lands of millions of stale mining claims; and it also sought to provide for centralized collection by federal land managers of comprehensive and up-to-date information on the status of mining claims. Such centralized record-

keeping allows federal managers to make informed and efficient land use decisions, consistent with Congress's overall objective of improving federal land management.[11] Prior to enactment of Section 314, federal land managers lacked a source of readily available and up-to-date information about the status of claims. Thus, before they could proceed with any action that would affect a piece of federal land, they were required to undertake cumbersome title searches in county courthouses and to initiate administrative adjudications to determine the validity of any outstanding claims they discovered. See page 4, *supra*. The Section 314 filing requirements eliminate this significant administrative burden.[12]

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[11] Congress stated in the declaration of policy set out in FLPMA, "the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal and State planning efforts." 43 U.S.C. 1701(a)(2).

[12] BLM has advised us that the Section 314 filing requirements have indeed facilitated actions involving federal lands. For example, the State of Utah recently selected 223,000 acres pursuant to the indemnity selection program under 43 U.S.C. 853. In the course of a month, BLM was able to use the data base generated with the aid of Section 314 filings to identify 32,000 of those acres as covered by valid mining claims; that information was then used in reaching an agreement on acreage available for the State's indemnity selection. BLM estimates that prior to passage of Section 314, it would have taken four months of research at county courthouses, an additional 60 days for publication in the Federal Register and local newspapers, and perhaps several years to determine the status of claims through validity examinations and mining contest hearings in order to accomplish a similar result.

Thus far, the major benefits of the Section 314 recordation program have been in the area of land conveyance and disposal of isolated, unmanageable tracts pursuant to Section 203 of FLPMA, 43 U.S.C. 1713. Information generated by the program has also aided in the demarcation of active mineral exploration areas, which in turn facilitates the planning of new areas of mining and industrial activity on public lands.

Automatic invalidation of claims by the terms of Section 314(c) following a claimant's failure to comply with the filing requirements plays a significant part in fulfilling Congress's objectives. Most obviously, it promotes administrative convenience by providing a self-executing mechanism for terminating stale claims. Such a mechanism avoids the delay that would be involved in identifying all claims and making countless individual determinations of whether a given claim is stale or not.[13] Automatic invalidation of claims under Section 314(c) also serves as an enforcement mechanism for the filing requirements. Without an effective penalty, there would be little incentive for claimants to make timely filings or, indeed, to make any filings at all.[14] The threat of in-

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[13] Of course, many stale claims presumably were eliminated as a result of claimants' failure to make initial recordations by October 1979. However, annual filings serve to weed out additional claims that have become stale since October 1979, thus continuously freeing up public land for relocation by other miners or for other uses.

[14] Past experience indicates that filing requirements will not be effective unless there is some enforcement mechanism. Prior to the passage of Section 314, there were several statutory recording requirements applicable under special circumstances. See, *e.g.*, Act of Aug. 11, 1955, ch. 797, § 4, 69 Stat. 683, 30 U.S.C. 623 (requiring recordation and reporting for claims on lands withdrawn for power site development). BLM has advised us that because there was no statutory penalty for noncompliance (see *MacDonald* v. *Best*, 186 F. Supp. 217 (N.D. Cal. 1960)), it rarely received the required filings.

validation provides the powerful motivation to comply that is essential to an "accurate and perpetual inventory of mining claims on the public lands and of those persons who assert an interest in [such] claims." *Topaz Beryllium Co.* v. *United States*, 479 F. Supp. 309, 314 (D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1981). The automatic invalidation mechanism also allows federal land managers to be certain about the current status of a claim, so that they can act expeditiously and with confidence in taking steps that affect particular lands.

Section 314 imposes only minimal burdens on mining claimants. Of course, the individual claimant is in the best position to know whether he intends to retain his claim and to take the necessary steps to preserve his rights. A claimant is required simply to make a single initial recordation, followed by annual filings of either a notice of intention to retain the claim or an affidavit of annual assessment work. The initial location notice and annual assessment work affidavit are familiar documents that many claimants were required to record locally prior to the enactment of Section 314. See 30 U.S.C. 28; J.S. App. 6a. Filing deadlines are clearly set out in the statute and regulations. An annual filing may be made at any time during the calendar year "prior to December 31."

If there were any doubt about the power of Congress to condition retention of a mining claim on compliance with the Section 314 filing requirements, it would be dispelled by this Court's decision in *Texaco, Inc.* v. *Short*, 454 U.S. 516 (1982). The Court in *Texaco* considered the Indiana Mineral Lapse Act, which provided that a vested mineral interest in privately held land would be extinguished following

a 20-year period of nonuse if the owner did not file a statement of claim with the State within a two-year period. The Court concluded that there was no question that Indiana possessed the power "to condition the retention of a property right upon the performance of an act within a limited period of time." 454 U.S. at 529; see also *id.* at 540 (Brennan, J., dissenting) (noting that there was no real dispute concerning "Indiana's power to control, define, and limit interests in land within its boundaries" or that "extinguishment of a mineral owner's rights may be an appropriate sanction for a failure to register").[15]

Texaco involved the actions of a state government with respect to vested interests in privately held land. *A fortiori*, imposition of a similar condition on retention of unpatented claims located on federal lands is within the power of Congress.[16] And, as we have

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[15] The Indiana statute required filing of a statement of claim only if a mineral interest had not been used for a period of 20 years. It seems clear, however, that the authority to condition retention of an interest on filing is not confined to situations in which property has not been used in recent years. A filing requirement that applies to both active and inactive interests, such as that imposed by Section 314, can serve many legitimate purposes, as we explained at pages 19-20, *supra*.

[16] Congress's power undoubtedly encompasses the authority to impose a new condition in connection with mining claims already in existence at the time FLPMA was enacted. *Texaco*, too, involved a statute that provided for extinguishment of existing interests if owners failed to meet new requirements. As the Court's discussion in *Texaco* (454 U.S. at 526-529) shows, provisions that affect interests created before their enactment have been upheld in a number of cases.

Appellees cannot contend that they obtained their claims with the expectation that the claims would never be subject to the condition that claimants comply with reasonable filing

shown, Section 314 furthers legitimate governmental objectives, while imposing minimal burdens on claimants. Thus, Congress cannot be said to have exercised its power in an arbitrary manner. Compare *Texaco*, 454 U.S. at 529-530. And see *Western Mining Council* v. *Watt*, 643 F.2d 618, 629 (9th Cir.), cert. denied, 454 U.S. 1031 (1981) ("The legislative

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requirements. Compare, e.g., *Merrion* v. *Jicarilla Apache Tribe*, 455 U.S. 130, 144-148 (1982); *United States Trust Co.* v. *New Jersey*, 431 U.S. 1, 22-23 (1977); *City of El Paso* v. *Simmons*, 379 U.S. 497, 514-515 (1965). Claimants have always been subject to certain statutory requirements that form part of a system of regulation of federal lands; thus, they cannot object if Congress chooses to alter those conditions prospectively in order to achieve reasonable legislative objectives. See, e.g., *FHA* v. *The Darlington, Inc.*, 358 U.S. 84, 91 (1958). And cf. *Pension Benefit Guaranty Corp.* v. *R.A. Gray & Co.*, Nos. 82-245 and 83-291 (June 18, 1984) (retroactive legislation in previously regulated area did not violate due process); *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 14-20 (1976) (same).

The functions served by Section 314 bear some resemblance to the purposes underlying the enactment at issue in *City of El Paso* v. *Simmons*, *supra*. There the Court held that a Texas statute that limited the right of reinstatement of contractual claims to purchase public land to five years from the date of forfeiture did not violate the Contract Clause. Although the right of reinstatement had not been so limited at the time individuals entered into the contracts, the Court noted that the State possessed reserved power to safeguard the vital interests of its people. The Court determined that the Texas statute of repose served important state objectives, including clarification of land titles, elimination of massive litigation over titles, and effective administration of property by the State, while the measure taken to induce purchasers to comply with their contracts was quite mild. 379 U.S. at 509-517. Of course, the standard under the Due Process Clause is less searching than that applicable to claims under the Contract Clause. *Pension Benefit Guaranty Corp.*, v. *R.A. Gray & Co.*, slip op. 14-15.

history of [Section 314] makes it clear that on their face the filing requirements are neither an arbitrary nor irrational way of realizing • • • permissible governmental objectives."); *id.* at 629-630 (rejecting the contention that the provisions of Section 314(c) are unreasonably harsh in requiring that mining claims be conclusively deemed abandoned upon failure to file).

B. Section 314(c) Is Consistent With the Requirements of Procedural Due Process

The district court held (J.S. App. 9a) that Section 314(c) fails to meet procedural due process requirements essentially because an individual who fails to file a timely notice of intention to hold a mining claim or affidavit of annual assessment work does not receive notice and a hearing before his claim becomes invalid under the terms of the statute. In fact, Section 314(c) comports fully with the requirements of procedural due process.[17]

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[17] At the outset, we note that the property interest at issue in this case is somewhat weaker than the interest considered in *Texaco* v. *Short*. The severed mineral interests in *Texaco* were defined by state law as "vested" and as entitled to the same protection as fee simple titles. See 454 U.S. at 519 n.5. The mining claims here are unpatented and are defined in terms of a "right of present and exclusive possession." *Wilbur* v. *United States ex rel. Krushnic*, 280 U.S. 306, 316 (1930); *Cameron* v. *United States*, 252 U.S. 450, 460 (1920). Until a claimant proceeds to patent, paramount title to the lands on which the claims are located remains in the United States. *Best* v. *Humboldt Placer Mining Co.*, 371 U.S. at 336. This Court has repeatedly characterized mining claims as "property in the fullest sense of that term." *Wilbur* v. *United States ex rel. Krushnic*, 280 U.S. at 316; *Bradford* v. *Morrison*, 212 U.S. 389, 394-395 (1909); *Belk* v. *Meagher*, 104 U.S. 279, 283 (1881); *Forbes* v. *Gracey*, 94 U.S. at 767. However, such

Like the appellants in *Texaco* v. *Short*, appellees in this case contended that their property rights had been extinguished without adequate notice.[18] The reasons the Court articulated in rejecting the challenge to the Indiana statute considered in *Texaco* also support the conclusion that the appellees here were not deprived of notice in violation of due process.

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claims remain subject to conditions set by Congress, and the Interior Department has authority to issue regulations affecting claims and to determine their validity. *Best* v. *Humboldt Placer Mining Co.*, 371 U.S. at 336; *Cameron* v. *United States*, 252 U.S. at 460.

[18] Appellees also claimed (Complaint 6-7 ¶ 17) that Section 314(c) effected a taking of their property without just compensation. The district court did not address the just compensation issue; however, it did characterize Section 314(c) as effecting a taking of appellees' property interests (J.S. App. 4a).

This Court's decision in *Texaco* makes it clear that the district court's characterization is incorrect. In *Texaco* the Court explained (454 U.S. at 530) that a statute under which property is deemed to be abandoned upon the owner's failure to take reasonable actions imposed by law does not amount to a "taking" that requires just compensation under the Fifth and Fourteenth Amendments. There is no "taking" because it is the owner's failure to do the required act, rather than any action of the government, that directly causes extinguishment of the property right. The Court noted in *Texaco* that it had "never required the State to compensate the owner for the consequences of his own neglect" and that "after abandonment, the former owner retains no interest for which he may claim compensation" (*ibid.*).

The action required by Section 314—filing of standard documents in a timely manner—is clearly reasonable and within the capability of any claimant. Thus, invalidation of a claim following a claimant's failure to comply with the statutory requirements does not effect any taking.

Publication of Section 314 effectively placed claimants on notice of its provisions. Section 314, like the Indiana Mineral Lapse Act in *Texaco*, spells out filing deadlines and the consequences of failure to make timely filings. "Generally, a legislature need do nothing more than enact and publish the law, and afford the citizenry a reasonable opportunity to familiarize itself with its terms and to comply." *Texaco*, 454 U.S. at 532. " 'All persons are charged with knowledge of the provisions of statutes and must take note of the procedure adopted by them.' " *Id.* at 532 n.25 (quoting *North Laramie Land Co.* v. *Hoffman*, 268 U.S. 276, 283 (1925)). See also, *e.g.*, *FCIC* v. *Merrill*, 332 U.S. 380, 384-385 (1947); *Anderson Nat'l Bank* v. *Luckett*, 321 U.S. 233, 243 (1944).

As the Court observed in *Texaco*, property owners in particular may be presumed to be aware of statutory changes affecting their rights. "It is well established that persons owning property within a State are charged with knowledge of relevant statutory provisions affecting the control or disposition of such property." 454 U.S. at 532 (footnote omitted). "All persons having property located within a state and subject to its dominion must take note of its statutes affecting the control or disposition of such property and of the procedure which they set up for those purposes." *Anderson Nat'l Bank* v. *Luckett*, 321 U.S. at 243 (citations omitted), quoted with approval in *Texaco*, 454 U.S. at 533 n.27. These principles apply with even greater force in the case of individuals, like the appellees in this case, who have claims located on public lands. Such individuals obtained their claims in the context of a system of governmental regulation and therefore should have a heightened

awareness that their rights could be affected by statutory or regulatory changes.

Of course, as the Court noted in *Texaco* (454 U.S. at 532), there generally must be some reasonable period within which individuals have an opportunity to become familiar with a new statute that affects existing rights. See also *Block* v. *North Dakota ex rel. Bd. of University & School Lands*, No. 81-2337 (May 2, 1983), slip op. 12 n.23; *Wilson* v. *Iseminger*, 185 U.S. 55, 62-63 (1902). In *Texaco* the Court concluded that the two-year grace period provided by the Indiana Mineral Lapse Act provided ample notice of the statutory filing requirement and forfeiture provision and was therefore consistent with due process. The Court noted that "[a] legislative body is in a far better position than a court to form a correct judgment concerning the number of persons affected by a change in the law, the means by which information concerning the law is disseminated in the community, and the likelihood that innocent persons may be harmed by the failure to receive adequate notice." 454 U.S. at 532 (footnote omitted). See also *Wilson* v. *Iseminger*, 185 U.S. at 63; *Terry* v. *Anderson*, 95 U.S. 628, 633-634 (1877). The Court was unable to conclude that the Indiana statute was "so unprecedented and so unlikely to come to the attention of citizens reasonably attentive to the enactment of laws affecting their rights" that the two-year grace period was constitutionally inadequate. 454 U.S. at 533.

The grace period provided by Section 314 is more generous than the one the Court in *Texaco* found to be consistent with due process. Although FLPMA was enacted in 1976, owners of existing claims were not required to make an initial recordation or annual filing until October 1979. Thus, claimants had three

years within which to become familiar with the Section 314 filing requirements and the consequences of failure to comply with them, compared with the two-year grace period under the Indiana statute. Moreover, the statutory change at issue here may have been more predictable than that considered in *Texaco*, since mining claimants on public land cannot help being aware that their claims are subject to an ongoing system of statutory conditions and administrative regulation. Congress's judgment that three years was a sufficient period within which claimants could become familiar with the provisions of Section 314 was clearly reasonable and is entitled to deference.

In any event, in the circumstances of this case the question of reasonable notice of the existence of the new statute is largely irrelevant. This case involves the obligation to comply with the December 30 deadline of Section 314(a), which comes after the due date of the initial recordation and filing required by Section 314. Those whose claims are rendered invalid on the ground that they failed to comply with the annual filing requirement by definition were aware of the existence of Section 314 because they already had complied with the initial recordation requirement. Here appellees acknowledged in their Complaint (at 4 ¶ 12) that they filed certificates of location, maps, and affidavits of assessment work for their claims in October 1979, as required by Section 314(a) and (b). See also Mot. to Aff. 3. Moreover, it is clear that appellees knew specifically about the existence of the annual filing requirement of Section 314(a), because they in fact submitted such a filing, albeit in an untimely manner.[18] Thus, appellees can-

[18] This case therefore differs from *Texaco* v. *Short*, in which the record did not indicate whether the appellants were aware

not claim that they themselves were unaware of the Section 314 filing requirements; instead, they can only admit that they failed to examine the statute and regulations closely enough to ascertain the relevant due date under Section 314(a).

Appellees contended below that they had a constitutional right to individualized notice and a hearing prior to invalidation of their claims for failure to make a timely annual filing for 1980, and the district court agreed. But here, as in *Texaco*, "it is essential to recognize the difference between the self-executing feature of the statute and a subsequent judicial [or administrative] determination that a particular lapse did in fact occur" (454 U.S. at 533). Here appellees received notice following their apparent failure to file in a timely manner and an opportunity to present evidence of compliance with Section 314 before the BLM determination of invalidity became final. Appellees took advantage of this opportunity by pursuing an appeal to the Interior Board of Land Appeals. The IBLA did not hold an evidentiary hearing in appellees' case, but that is because appellees themselves advised the Board that they had hand delivered their affidavits of assessment work to BLM on December 31, 1980, rather than "prior to December 31,"

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of the enactment of the Mineral Lands Act. See 454 U.S. at 522. Appellees in this case apparently were aware of not only the filing requirements, but also the effect on their claims of a failure to comply with the requirements. In their Complaint (at 4 ¶ 12) they stated that they made their initial recordation and filing prior to October 21, 1979, "in order to protect [their] ten mining claims from forfeiture." Appellees' account of their efforts to comply with the 1980 annual filing requirement (see Mot. to Aff. 3) also suggests that they were aware that a failure to comply with that requirement would result in forfeiture.

as Section 314(a) requires. As the IBLA stated in its opinion, "a hearing is not required in the absence of assertions of facts which, if proved true, would entitle [appellees] to the relief sought" (J.S. App. 20a).[28]

Appellees are therefore left with the contention that the self-executing feature of Section 314(c)—automatic invalidation of a claim following failure to comply with the filing requirements of Section 314(a) and (b)—may not take effect unless they previously received individual notice. But as the Court in *Texaco* noted (454 U.S. at 536), such a claim "has no greater force than a claim that a self-executing statute of limitations is unconstitutional."[29]

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[28] The relevant issue in determining whether a claim has become invalid by operation of Section 314(c)—whether a claimant has complied with the filing requirements of Section 314—is quite different from, *e.g.*, the issues relevant to the determination considered in *Cameron* v. *United States*, *supra*. In *Cameron* the Court considered the authority of the Interior Department to nullify an unpatented mining claim on the basis of inconsistency with requirements of the general mining laws. The Court concluded that the agency could nullify a claim after proper notice and an administrative hearing. 252 U.S. at 460. The relevant issues in such a case—whether there had been a mineral discovery within the limits of the claim, whether the land was mineral in character, and whether the claimant otherwise had complied with requirements of the general mining laws (*id.* at 456)—are best determined in a hearing.

[29] This Court has upheld the constitutionality of statutes of limitations that may operate to extinguish causes of action existing at the time of enactment of the statute, so long as the legislature provides a reasonable grace period within which suits may be brought on those existing causes of action. See, *e.g.*, *Block* v. *North Dakota*, slip op. 12 n.22; *Sieger* v. *Lawrence Bros.*, 201 U.S. 359, 369 (1906) (Holmes, J.); *Terry* v. *Anderson*, 95 U.S. at 632-634. See also, *e.g.*, *Anderson Nat'l*

In *Texaco* the Court held that due process did not require individualized preforfeiture notice before a

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Bank v. *Luckett*, 321 U.S. at 240-241 (statute governing disposition of abandoned bank deposits); *Montoya* v. *Gonzales*, 232 U.S. 375, 378 (1914) (Holmes, J.) (adverse possession); *Wilson* v. *Iseminger*, *supra* (extinguishment of ground rents); *Jackson* v. *Lamphire*, 28 U.S. (3 Pet.) 280, 289-290 (1830) (recording statute). And see *City of El Paso* v. *Simmons*, *supra* (limiting to five years the right of reinstatement of contractual claims to purchase public lands). There is no suggestion in these cases that individual notice and a hearing must be afforded to those whose interests are affected by such statutes.

Of course, there are many other situations in which failure to comply with a filing deadline results in loss of an important right or other penalty. An obvious example is the time periods within which a party must act in order to preserve his right to judicial review. This Court has held that the requirement of a timely notice of appeal, filed within the deadlines set out in Fed. R. App. P. 4, is "mandatory and jurisdictional" and that failure to file a timely notice deprives the appellate court of jurisdiction to act. *See Griggs* v. *Provident Consumer Discount Co.*, 459 U.S. 56, 61 (1982); *Browder* v. *Director, Illinois Dep't of Corrections*, 434 U.S. 257, 264 (1978). The deadlines for filing in this Court (see 28 U.S.C. 2101) are also jurisdictional. *See Dep't of Banking* v. *Pink*, 317 U.S. 264 (1942). Indeed, this case is before the Court only because we ourselves lost the opportunity to obtain review of *Rogers* v. *United States*, 575 F. Supp. 4 (D. Mont. 1982), in which another district court held Section 314(c) unconstitutional; following the decision in *Rogers*, government attorneys failed to file a notice of appeal to this Court within the 30-day time limit set by 28 U.S.C. 2101(a). And see U.C.C. § 9-302 (1977) (requiring filing of a financing statement in order to perfect a security interest); U.C.C. § 9-403(2) (1972) (providing that perfection lapses after a five-year period unless a creditor files a continuation statement); 26 U.S.C. 6651(a)(1) (providing a penalty for failure to file a timely tax return). Again, there is no suggestion that due process requires individual notice to those who may lose property or otherwise suffer penalties if they fail to meet these deadlines.

vested mineral interest lapsed in accordance with the self-executing terms of the Indiana Mineral Lapse Act. The Court specifically rejected the suggestion "that each citizen must in some way be given specific notice of the impact of a new statute on his property before that law may affect his property rights" (*ibid.*). Like the Indiana statute, Section 314 sets out in clear terms "the circumstances in which a property interest will lapse through the inaction of its owner" (454 U.S. at 537). Due process therefore does not require individualized notice before a claim becomes invalid by operation of law under Section 314(c).[20]

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[20] Indeed, since the federal government itself is the owner of the land on which the mining claims affected by Section 314 are located, the case for individualized preforfeiture notice is even weaker here than in *Texaco*. Under the Indiana statute it would have been relatively nonburdensome for each surface owner to provide preforfeiture notice to the owners of the mineral interests on his land. Here, there would be a considerable burden on the federal government if it were required to notify each delinquent claimant. It was reasonable for Congress instead to place on claimants themselves the minimal burden of complying with the Section 314 filing requirements.

BLM has advised us that, beginning in 1980, its practice has been to mail annual reminder notices to claimants several months before the annual filing deadline in an effort to promote compliance with the statute. Thus, every claimant who has made an initial recordation should receive advance warning that the December 30 deadline for annual filing is approaching. The 1980 reminder notice stated explicitly: "You must file on or before 12/30/80. Failure to file timely with the proper BLM office will render your claim abandoned." We assume that appellees received a reminder notice from BLM in 1980. However, the record does not indicate whether or not appellees in fact received a notice.

We do not believe such advance warning is constitutionally required; rather, it is a matter of administrative judgment

Although the government argued below [29] that this case is governed by *Texaco* v. *Short*, the district court did not even mention *Texaco* in its opinion. However, another district court has distinguished *Texaco*. In *Rogers* v. *United States*, 575 F. Supp. 4 (D. Mont. 1982), the court declared Section 314(c) unconstitutional in a case involving invalidation of claims following failure to make an initial recordation in a timely manner, as required by Section 314 (b). See page 10 note 9, *supra*. On the government's petition for rehearing, the district court distinguished *Texaco* on the ground that the Indiana statute at issue there provided for lapse only in cases in which a mineral interest had not been used for 20 years, while under Section 314 property rights may be lost as a result of failure to file, "notwithstanding actual proprietary use of the property." *Rogers* v. *United States*, No. CV-80-114-H (D. Mont. June 15, 1983), slip op. 2.[30]

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within BLM's discretion. In any event, it would be far-fetched to suggest that, once BLM provides a *reminder* notice in advance of the filing date, the Constitution would require yet another reminder after the filing date had passed.

[29] See Memorandum of Points and Authorities in Support of Defendants' Motion for Summary Judgment, at 34-36.

[30] Of course, the distinction between the two statutes is probably due in large part to their differing purposes. Nonuse was relevant under the Indiana statute because its primary purpose was to encourage productive use of private lands. See 454 U.S. at 551-552 (Brennan, J., dissenting). Section 314 provides an administratively convenient method of clearing stale claims from federal lands, serves as an enforcement mechanism that enables collection of up-to-date information about the status of mining claims, and allows federal managers to make land use decisions with some certainty. See pages 19-20, *supra*. Nonuse has only limited relevance to those functions.

The *Rogers* court's effort to distinguish *Texaco* is unavailing. In large part the attempted distinction appears to follow from the court's erroneous perception of Section 314(c) as creating an impermissible irrebuttable presumption of abandonment (a perception shared by the district court in this case). We explain the error of that perception in the following section. In any event, the fact that Congress did not include nonuse as a necessary predicate to invalidation of a claim under Section 314(c) does not render the holding in *Texaco* inapplicable to this case. As we explained in the preceding section, it is clearly within Congress's power to condition retention of a mining claim located on federal lands on compliance with the reasonable filing requirements of Section 314 alone. See pages 15-23 & note 15, *supra*. The procedural due process standard applicable to invalidation of a claim under such a provision is not more demanding than that applied to a statute that conditions retention of a fee interest on a combination of nonuse and failure to comply with a filing requirement. Indeed, if anything, individuals who are actively mining claims located on public land should be more likely to keep abreast of statutory and regulatory changes that may affect their interests than are those who have allowed their interests in privately held lands to lie dormant.[31]

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[31] In support of their conclusion that the Indiana Mineral Lapse Act provided insufficient notice to owners of mineral interests, the dissenters in *Texaco* cited *Lambert* v. *California*, 355 U.S. 225 (1957), although they acknowledged that *Lambert* did not control there because "the imposition of *criminal sanctions*, giv[es] rise to a *rigor* in the application of due process standards that would be inappropriate where only interests in property are at stake * * *" (454 U.S. at 547 n.4

The district court also held that due process may require a preforfeiture hearing in the case of a claimant who fails to comply with a Section 314 filing deadline. In the district court's view, a hearing would give the claimant an opportunity to establish that he had not abandoned his claim. See J.S. App. 9a. But that is not the relevant issue under Section 314(c); rather, the inquiry focuses solely on whether the claimant filed an instrument that complies with Section 314(a) or (b). As we noted above (at 28-29), a claimant has a full opportunity to present

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(Brennan, J., dissenting; emphasis in original)). In *Lambert* the Court characterized the California registration statute at issue there as "entirely different" from other licensing or registration statutes relating to the regulation of business activities, because "circumstances which might move one to inquire as to the necessity of registration are completely lacking" (355 U.S. at 229).

Section 314 is clearly distinguishable from the California law considered in *Lambert*. The filing requirements under Section 314 form part of a comprehensive system of regulation of public lands. See H.R. Rep. 94-1163, 94th Cong., 2d Sess. 3-4 (1976); S. Rep. 94-583, 94th Cong., 1st Sess. 24 (1975). Indeed, claimants have always been subject to some regulation under the provisions of the general mining laws. Thus, they have good reason to keep informed about any new statutory or regulatory requirements. In an area subject to an ongoing system of governmental regulation, lack of notice of filing requirements may not be a defense even to the imposition of criminal penalties. See, *e.g.*, *United States* v. *Freed*, 401 U.S. 601, 607-610 (1971) (*proof of specific intent unnecessary in connection with the crime of possessing an unregistered firearm*). See also *United States* v. *Dotterweich*, 320 U.S. 277, 281 (1943) (*criminal penalties may "serve as an effective means of regulation"*); *United States* v. *Balint*, 258 U.S. 250, 253-254 (1922).

evidence on that issue in the proceeding before the Interior Board of Land Appeals."

C. Section 314(c) Does Not Create an Impermissible Irrebuttable Presumption of Abandonment

Despite the apparent consistency of Section 314 with the requirements of due process, the district court concluded (J.S. App. 5a-10a) that Section 314(c) is unconstitutional. The court based this conclusion on its determination that Section 314(c) creates an impermissible irrebuttable presumption of abandonment, citing *Vlandis* v. *Kline*, 412 U.S. 441 (1973). In fact, the irrebuttable presumption analysis of *Vlandis* has no application to this case.

In *Vlandis* the Court considered Connecticut's practice of charging higher tuition to students who were not bona fide residents while denying to individuals who previously had lived outside the State any opportunity to establish that they had become bona fide residents. The Court held that Connecticut's irrebuttable presumption of nonresidence violated due process because the presumption was not necessarily or universally true in fact and because the State had reasonable alternative means of determining bona fide residence.

" As this Court noted in *Texaco*, 434 U.S. at 534-536, the reasoning of cases such as *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), which provide that due process requires notice and opportunity for an appropriate hearing in cases involving deprivation of property by adjudication, does not apply to the self-executing feature of a statute; rather, it applies to a judicial proceeding brought to determine, *e.g.*, whether lapse of a mineral estate did or did not occur. Thus, *Mullane* governed the proceedings associated with appellees' appeal to the IBLA, but not the self-executing invalidation of their claims pursuant to Section 314(c).

In this case, the district court purported to apply the *Vlandis* analysis to reach the conclusion that Section 314 likewise violates due process. The court determined that Section 314(c) creates a conclusive presumption of abandonment that is not necessarily or universally true in fact, since failure to make a timely filing under Section 314 does not always signify intent to abandon a claim. The court further concluded that there are reasonable alternative means of determining whether a claimant in fact has abandoned a claim, *i.e.*, through individual notice and a predeforfeiture hearing.

The district court was misled, we submit, in reading Section 314(c) as cancelling mining claims for which the annual filing requirement has not been met *because* that default demonstrates abandonment in fact. Although Section 314(c) uses the words "deemed conclusively to constitute an abandonment," it does not create a presumption at all. It is clear that Congress did not intend invalidation of a claim to turn on abandonment or intent to abandon in the ordinary, common law sense of those terms." Instead, it merely provided in effect that failure to file the required instruments in compliance with Section 314(a) and (b) would result in extinguishment of a claim.[29] Of course, it would have been more straightforward if Congress had stated: "All claimants who fail to comply with the filing requirements of Section 314(a) and (b) shall forfeit their claims." However, Section 314(c) is not the less constitutional for its circumlocutory draftsmanship. Congress's choice of statutory language cannot invalidate a provision if its operation and effect are otherwise permissible. *See Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 23-24 (1976). And see *United States* v. *Union Pacific R.R.*, 353 U.S. 112, 117-118 (1957).

Moreover, Section 314(c) does not present the sort of dilemma the Court perceived in *Vlandis*. There the Connecticut legislature had established bona fide residency as the factor that would qualify an individual for a lower tuition charge, but denied certain individuals who previously had lived outside the State

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[29] In effect, Section 314(c) simply assigns a new definition to the term "abandonment" for purposes of that provision. As the House report accompanying the legislation states, "[f]ailure to comply with [Section 314(a) and (b)] constitutes abandonment of the claim." H.R. Rep. 94-1163, *supra*, at 11.

[30] Section 314(c) does not amount to a legislative determination that, contrary to fact, all (or even some) claimants who fail to file a timely annual notice have actually abandoned their claims. It expresses instead a determination that claimants who fail to comply with the filing requirements should lose their claims. In the framework of mining law, denominating those claims "abandoned" produces that result. See 2 *The American Law of Mining* § 8.5A (Rocky Mountain Mineral Law Foundation ed. 1982).

This was Congress's understanding of the "deemed conclusively" language. The Senate version of the bill provided that any claim for which the claimant has not applied for a patent within ten years "shall be conclusively presumed to be abandoned and shall be void." 122 Cong. Rec. 4039 (1976). Senator McClure described that provision as follows: "In essence, what the bill does is say that if there is an unpatented mining claim on the public domain • • • they would have to proceed to patent within 10 years or relinquish the claim." *Id.* at 4052. See also *Public Land Policy and Management Act of 1975: Hearings on H.R. 5224 and H.R. 5622 Before the Subcomm. on Public Lands of the House Comm. on Interior and Insular Affairs*, 94th Cong., 1st Sess. 224 (1975) (remarks of Jack O. Horton, Assistant Secretary of the Interior) (under the administration's proposal for recordation of mining claims, "[f]ailure to comply would render the claim invalid").

any opportunity to introduce evidence that they met the requirement. Such individuals thus were completely foreclosed from establishing eligibility for the lower tuition charge. Here Congress has not set up abandonment as the statutory standard and then precluded introduction of evidence on that issue; rather, it has simply required that a claimant comply with the filing requirements of Section 314 in order to retain his claim. That condition is obviously not impossible or burdensome to meet and is entirely within the control of the individual claimant. Compare *Weinberger* v. *Salfi*, 422 U.S. 749, 772 (1975).

We note that in more recent decisions this Court has suggested that the irrebuttable presumption analysis of *Vlandis* has little or no application to otherwise reasonable economic regulatory measures. In *Weinberger* v. *Salfi*, *supra*, the Court declined to apply the *Vlandis* analysis to duration-of-relationship Social Security eligibility requirements for surviving wives and stepchildren of deceased wage earners. In a passage of particular relevance to this case, the Court noted that the *Vlandis* analysis would be wholly inappropriate as applied to, *e.g.*, a statute that established time limits for assertion of rights under the Social Security Act. The Court explained in *Salfi* (422 U.S. at 773) that a court should not second-guess the judgment of the legislature about "whether such a flat cutoff provision was necessary to protect the Secretary from stale claims, whether it would be possible to make individualized determinations as to any prejudice suffered by the Secretary as the result of an untimely filing, and whether or not an individualized hearing on that issue should be required in each case." The Court noted further that application of the *Vlandis* analysis to legislation involving

economic regulation "would turn the doctrine of [*Vlandis*] into a virtual engine of destruction for countless legislative judgments which have heretofore been thought wholly consistent with the Fifth and Fourteenth Amendments to the Constitution" (422 U.S. at 772).

The Court concluded in *Salfi* that Congress could rationally adopt a prophylactic approach such as the duration-of-relationship eligibility requirement, since "any imprecision from which it might suffer was justified by its ease and certainty of operation" (422 U.S. at 780). See also *Mourning* v. *Family Publications Service, Inc.*, 411 U.S. 356, 377 (1973) (declining to conclude that a prophylactic regulatory measure was equivalent to a conclusive presumption of the existence of determinative facts). And see *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. at 22-24 (declining to invalidate a statute regulating purely economic matters on the ground that it was worded in terms of a conclusive presumption of total disability). In this case, too, Congress acted reasonably in adopting a self-executing provision that minimizes administrative burdens and furthers the goal of efficient administration of the public domain. That rational legislative judgment, like the provision at issue in *Salfi*, should not be invalidated on the basis of a superficial application of the *Vlandis* analysis.[20]

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[20] Commentators have criticized the irrebuttable presumption analysis employed in *Vlandis*. See Note, *Irrebuttable Presumptions: An Illusory Analysis*, 27 Stan. L. Rev. 449, 472-473 (1975); Note, *The Irrebuttable Presumption Doctrine in the Supreme Court*, 87 Harv. L. Rev. 1534, 1556 (1974).

In *Texaco* v. *Short*, 454 U.S. at 536 n.28, the Court declined to reach the question whether a state could indulge in an assumption of abandonment if the statutory period of nonuse

Even if the irrebuttable presumption analysis of *Vlandis* were applicable to this case, the district court erred in concluding (J.S. App. 9a-10a) that the second prong of the *Vlandis* analysis is satisfied on the ground that notice and hearing procedures constitute a "reasonable and practicable" alternative to the approach Congress has chosen. As we have explained (see pages 19-20, *supra*), Section 314 serves a number of functions, some of which have little relation to the question of abandonment. Notice and an opportunity to prove nonabandonment would not promote these functions and, in fact, could be sufficiently burdensome to impair them. For example, as we noted (at 19), if BLM must notify a claimant before invalidation of a claim may occur, there would be no effective incentive for claimants to comply with the filing requirements on their own initiative; thus, BLM might be required to provide individual notice to virtually all claimants. Provision of a hearing for those who wished to show that they had not abandoned their claims would amount to at least a partial return to the time-consuming system of claim-by-claim adjudication that BLM was required to use before enactment of Section 314. See page 4. The delay in resolution of the status of disputed claims that would result from tardy filings or hearings on the issue of abandonment could impede significantly the ability of federal managers to make land use de-

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were shorter than 20 years or if "the interest affected is such that concepts of 'use' or 'nonuse' have little meaning." We do not believe that the Court intended to imply in any way that the federal government could not condition retention of a mining claim located on public land on compliance with reasonable filing requirements alone, without regard to use or nonuse. See page 21 note 15.

cisions, thereby frustrating the overall purpose of FLPMA.

Even if Congress had expressed concern only with eliminating abandoned claims when it enacted Section 314(c), notice and hearing procedures would not necessarily be required as a "reasonable and practicable" alternative to the system Congress established. It is true that it would be possible for BLM to give notice to each claimant who fails to make a required annual filing, since the initial recordations made by claimants have provided BLM with a listing of claims in existence as of October 1979 (or as of some more recent date for new claims).[20] But it is not at all clear that due process would require that the burden be placed on BLM (which presumably would have to contact each claimant, inquire whether a claim has been abandoned, and, if necessary, conduct a hearing), rather than on individual claimants, who are in the best position to know whether they intend to hold their claims and to take responsibility for advising BLM of their intentions.

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[20] As we noted (at 31 note 22), BLM's current practice is to send out annual reminders to claimants several months before the due date of the annual filings required by Section 314(a). In addition, it sends notices to those whose claims have been declared void because of failure to comply with the Section 314 filing requirements. *See, e.g.*, J.S. App. 22a-24a.

The district court appears to have recognized (J.S. App. 9a) that it would have been impossible for BLM to use such procedures in connection with the initial recordation requirement under Section 314 because it could not have identified and adjudicated each of the millions of claims that had been located on federal lands over the years. Cf. *Rogers* v. *United States*, 575 F. Supp. at 11 (expressing the view that allowing a hearing to a mining claimant prior to invalidating his unpatented mining claim for failure to make an initial recordation would not be overly burdensome to the government).

II. APPELLEES DID NOT RETAIN THEIR MINING CLAIMS BY FILING ONE DAY LATE, BECAUSE SECTION 314 IS NOT SATISFIED BY "SUBSTANTIAL COMPLIANCE" WITH ITS REQUIREMENTS

The district court held in the alternative (J.S. App. 10a-12a) that appellees "substantially complied" (*id.* at 1a) with the requirements of Section 314 by filing their 1980 affidavits of assessment work one day late, *i.e.*, on December 31 of that year. But, contrary to the district court's view, Section 314 is not satisfied by less than full compliance with its terms.

The language of Section 314 appears absolute and does not suggest that some form of "substantial compliance" with the filing deadlines would suffice to avoid invalidation of a claim. Section 314(a) expressly provides that annual filings must be made "prior to December 31" of each year. Filing a notice on December 31 is plainly not the same as filing it *prior* to December 31.[40] Section 314(c) on its face

[40] The legislative history does not indicate why Congress chose to require filing of annual notices "prior to" December 31, rather than on or before December 31. It may well be that Congress wished to require filing by the end of the calendar year and that the earlier deadline resulted from careless draftsmanship. See Sherwood, *Mining-Claim Recordation and Prospecting Under the Federal Land Policy and Management Act of 1976*, 23 Rocky Mtn. L. Inst. 1, 25 (1977). However, the supposition that Congress might not have meant what it said would not warrant a reading of the statute that is contrary to its plain language. *See United States Railroad Retirement Board v. Fritz*, 449 U.S. 166, 179 (1980). Of course, there is nothing to prevent Congress from setting any filing deadline it wishes whether or not a different time might seem more natural.

Perhaps it might be argued that the words "prior to December 31" should be read as though Congress had said "prior to the close of business on December 31." However, we are unable to conclude that the words of the statute can be stretched this far. The natural reading of "prior to December 31" is on or before December 30. Any confusion on this point would be dispelled by the Secretary's regulation, which states that claimants must make their annual filings "on or before December 30 of each calendar year." 43 C.F.R. 3833.2-1(b)(1). Claimants are charged with knowledge of the regulation. See 44 U.S.C. 1507; *Heckler v. Community Health Services*, No. 82-56 (May 21, 1984), slip op. 12-14; *FCC v. Merrill*, 332 U.S. at 384-385.

As we noted above (at 6), the Secretary has revised the implementing regulations to provide that annual notices will be considered timely filed if they are postmarked on or before December 30 and are received at the proper BLM office by the following January 15th. While that amendment is a liberalization of the previous regulation (which required that annual notices actually be received at the BLM office on or before December 30), it does not depart from the plain words of the statute. Rather, it rests on the Secretary's interpretation of the term "[f]ile," which is not defined by the statute itself. Congress has delegated to the Secretary the authority to promulgate rules and regulations to carry out the purposes of FLPMA. See 43 U.S.C. 1740.

[41] In fact, under normal rules of statutory construction, time requirements imposed on an individual generally are mandatory and are strictly construed against that individual. See 2A C. Sands, *Statutes and Statutory Construction* § 57.19, at 445 (4th ed. 1973). Moreover, the language of public land grants generally is strictly construed against the grantee and

indicates that, except in certain enumerated circumstances (not including late filing, see pages 5-6 note 3, *supra*), any failure to comply with the filing requirements of subsections (a) and (b) will result in invalidation of a mining claim. We are unaware of any principle of statutory construction that would support the conclusion that such apparently absolute filing deadlines set by Congress may be read broadly to permit filing on some later date."

Congress clearly knew how to make exceptions to the Section 314 requirements. In Section 314(c) itself Congress expressly described certain circumstances in which failure to comply with the filing requirements would not result in invalidation of a claim. In addition, Congress recently provided some relief for claimants who have forfeited oil and gas placer claims through failure to meet the Section 314 deadlines. Under 30 U.S.C. 188(f), if the Secretary of the Interior concludes that such failure was "inadvertent, justifiable, or not due to lack of reasonable diligence on the part of the owner," he may issue a noncompetitive oil and gas lease, even though forfeiture of the claim normally would have subjected the land to competitive leasing.[*] The absence of any

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in favor of the government. *See Andrus* v. *Charlestone Stone Products Co.*, 436 U.S. 604, 617 (1978); *United States* v. *Union Pacific R.R.*, 353 U.S. at 116; 3 C. Sands, *Statutes and Statutory Construction* § 64.07, at 137 (4th ed. 1974).

The court in *Rogers* v. *United States*, 575 F. Supp. at 8, concluded that the plain language of Section 314(c) provides no support for a theory of substantial compliance. The court noted that "[c]arving out such a substantial compliance exception would clearly defy the 'plain meaning' rule of statutory construction." 575 F. Supp. at 8 (citing *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185, 201 (1976)).

[*] In addition, Congress has established grace periods in connection with other requirements under the mining laws. For example, 30 U.S.C. 188(b) provides that certain oil and gas leases will terminate automatically upon the lessee's failure to make annual rental payments on or before the anniversary date of the lease. However, Congress also provided that the Secretary may reinstate the lease if the lessee pays or tenders the annual fee within 20 days of the anniversary date and can show that the failure to make a timely payment was justifiable or not due to a lack of reasonable diligence. 30 U.S.C. 188(c). *See Ramcon, Inc.* v. *Andrus*, 649 F.2d 814 (10th Cir.), cert. denied, 454 U.S. 1082 (1981).

comparable provision for claims of the type held by appellees strongly suggests that Congress did not intend to permit anything less than full compliance in connection with those claims. *See, e.g., Fedorenko* v. *United States*, 449 U.S. 490, 512 (1981).[*]

The district court itself acknowledged (J.S. App. 10a) that the language of Section 314 does not support a "substantial compliance" standard. However, it purported to find support for such a reading of Section 314 in the legislative history and purpose of the statute. In fact, there is no such support.

The House Report states flatly that "[f]ailure to comply with [Section 314(a) and (b)] constitutes abandonment of the claim." H.R. Rep. 94-1163, 94th Cong., 2d Sess. 11 (1976). It does not suggest in any way that late filing would be permissible. And a construction of Section 314 that permits less than total compliance with the filing requirements would be at odds with Congress's goal of enabling BLM to obtain complete and up-to-date information on the status of mining claims on federal lands. Of course, the conclusion that these particular claimants should not be held to have forfeited their claims by filing one day late admittedly will not interfere in any measurable way with BLM's ability to obtain information. But the district court did not define the outer limits of substantial compliance, and, indeed, in the absence of any legislative guidelines, it would be difficult to do so. BLM cannot be certain from the district court's opinion whether claimants should be

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[*] If Congress should conclude that the results of the operation of Section 314(c) are too harsh in cases like that of appellees, it presumably could modify the provision or enact some other form of relief, as it did in the case of oil and gas placer claims.

allowed to file a day late, a month late, a year late, or more.

The district court's decision might allow BLM to establish a clear cut-off point for substantial compliance with Section 314. But it seems almost certain that disappointed claimants would dispute BLM's judgment about what compliance is "substantial." And if the period within which claimants may file in order to meet a substantial compliance standard turns out to be more than a few months, it could significantly retard BLM's ability to collect and tabulate information about the status of mining claims. It is quite unlikely that Congress would have intended that BLM would face such complications in administering what otherwise appear to be absolute filing deadlines.

The district court reasoned that a substantial compliance standard for annual filings would not be inconsistent with the legislative purpose because Congress was primarily interested in the elimination of stale claims (J.S. App. 11a),[46] which would be accomplished through the initial recordation requirement. In the court's view, the provision for annual

[46] The district court cited the Senate Report (S. Rep. 94-583, *supra*, at 65) for the proposition that Congress was primarily interested in the elimination of stale claims when it enacted Section 314. J.S. App. 11a. But the Senate bill did not include a provision for annual filings; instead, it required that a claimant make an initial recordation and proceed to patent within ten years in order to retain a claim. Thus, the comments in the Senate Report do not reflect the legislative purpose underlying the annual filing requirement. The Conference Committee rejected the approach of the Senate bill and instead adopted the House amendments, which contained both the initial recordation requirement and the annual filing requirement. H.R. Rep. 94-1724, 94th Cong., 2d Sess. 62 (1976).

filings was "merely for the convenience of federal land managers" (*ibid.*). But as we explained above (at 19-20), elimination of stale claims is only one of the purposes served by Section 314; that section also provides an efficient mechanism for collection of up-to-date, certain information about the status of unpatented mining claims, thus facilitating federal land use planning.[47] The latter purpose is by no means unimportant, particularly in view of the overall objectives of FLPMA. The district court's attempt to support its reading of the statute through denigration of the purpose of the annual filing requirement is simply unjustified.

In support of its conclusion that less than full adherence to the terms of the filing requirements is sufficient under Section 314, the district court relied on decisions in which this Court has suggested that substantial compliance satisfies the requirement under the general mining laws, 30 U.S.C. 28, that a claimant perform assessment work in the amount of $100 during each year. *See Hirkel* v. *Oil Shale Corp.*, 400 U.S. 48, 57 (1970); *Ickes* v. *Virginia-Colorado Development Corp.*, 295 U.S. 639 (1935); *Wilbur* v. *United States ex rel. Krushnic*, *supra*. The Court indicated in those cases that not every default in assessment work results in loss of a mining claim. In particular, the Court concluded in *Virginia-*

[47] *See Topaz Beryllium Co.* v. *United States*, 479 F. Supp. at 314, in which the court stated:

> The Act has a multitude of purposes—not just the cleansing of the public domain of dormant and unpursued mining claims. Some purposes, among others, are land use planning and management; the identification of lands subject to valid locations and invalid locations; and the identification of unauthorized occupancies.

Colorado Development Corp. and *Krushnic* that failure to expend $100 on a claim in a single year would not result in forfeiture of the claim if the claimant had satisfied the assessment work requirement in subsequent years or if its substantial attempts to resume such work had been frustrated by actions of the United States.

The assessment work cases cited by the district court do not control this case. The Section 314 filing requirements impose obligations above and beyond annual assessment work and the other conditions established by the general mining laws. As we explained above (at 3-4), Congress intended that the new filing requirements would eliminate the unsatisfactory situation that had existed under the general mining laws, including the need to prove through time-consuming case-by-case adjudication whether a claimant had met statutory requirements. Congress's objective of improving on the old system, rather than simply continuing it, argues against reading into Section 314 the Court's gloss on a provision of the general mining laws.[27]

Moreover, Section 314 is clearly distinguishable from the provisions at issue in the pre-FLPMA assessment work cases. Under 30 U.S.C. 28 failure to meet the annual assessment work requirement renders a claim open to relocation, but not if the original locator has resumed work on the claim prior to any relocation. It was this express allowance for preservation of a claim through resumption of work that allowed the Court in *Virginia-Colorado Development Corp.* and *Krushnic* to conclude that a failure to perform assessment work in a single year did not result in forfeiture of the claim. In contrast, there is no provision in Section 314 for any grace period to accommodate late filing. In addition, the savings clause at issue in the pre-FLPMA assessment work cases, 30 U.S.C. 193, did not provide expressly that a failure to comply with the annual assessment work requirement would invalidate the claim automatically; rather, it stated only that a claim must be "maintained in compliance with the laws under which initiated" in order to avoid being brought within the leasing system. In contrast, in Section 314(c) Congress provided that failure to comply with the filing requirements of subsections (a) and (b) "shall be deemed conclusively" to constitute abandonment of the claim. That language is absolute and provides no support for the district court's view that Section 314 is satisfied by "substantial compliance" with its requirements.

[27] And see 2 *The American Law of Mining*, *supra*, § 8.20E, at 244 (suggesting that for all practical purposes *Virginia-Colorado* and *Krushnic* have been overruled).

CONCLUSION

The judgment of the district court should be reversed.

Respectfully submitted.

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APPENDIX

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part that "[n]o person shall * * * be deprived of life, liberty, or property, without due process of law."

Section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1744, provides:

Recordation of mining claims

(a) Filing requirements

The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976 and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. The owner of an unpatented lode or placer mining claim located after October 21, 1976 shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on a detailed report provided by section 28-1 of title 30, relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

(b) Additional filing requirements

The owner of an unpatented lode or placer mining claim or mill or tunnel site located prior to October 21, 1976 shall, within the three-year period following October 21, 1976, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground. The owner of an unpatented lode or placer mining claim or mill or tunnel site located after October 21, 1976 shall, within ninety days after the date of location of such claim, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground.

(c) Failure to file as constituting abandonment; defective or untimely filing

The failure to file such instruments as required by subsections (a) and (b) of this section shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner; but it shall not be considered a failure to file if the instrument is defective or not timely filed for record under other Federal laws permitting filing or recording thereof, or if the instrument is filed for record by or on behalf of some but not all of the owners of the mining claim or mill or tunnel site.

(d) Validity of claims, waiver of assessment, etc., as unaffected

Such recordation or application by itself shall not render valid any claim which would not be otherwise valid under applicable law. Nothing in this section shall be construed as a waiver of the assessment and other requirements of such law.

43 C.F.R. 3833.2-1(b)(1) provides:

The owner of an unpatented mining claim located on Federal lands excluding lands within a unit of the National Park System, established on or before September 28, 1976, shall have filed or caused to have been filed on or before December 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim.

43 C.F.R. 3833.4 provides in pertinent part:

Failure to file

(a) The failure to file an instrument required by §§ 3833.1-2(a), and 3833.2-1 of this title within the time periods prescribed therein, shall

be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void.

• • • • •

(c) The fact that an instrument is filed in accordance with other laws permitting filing for record thereof and is defective or not timely filed for record under those laws shall not be considered failure to file under this subpart. The fact that an instrument is filed for record under this subpart by or on behalf of some, but not all of the owners of the mining claim, mill or tunnel site shall not affect the validity of this filing.

• • • • •

AMICUS CURIAE

BRIEF

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No. 83-1394

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1984

UNITED STATES OF AMERICA, et al.,
Appellants,

vs.

MADISON D. LOCKE, et al.,
Appellees.

On Appeal from the United States District Court for the District of Nevada

BRIEF AMICUS CURIAE OF ALASKA MINERS ASSOCIATION, CALIFORNIA MINING ASSOCIATION, NEVADA MINING ASSOCIATION, MINERS ADVOCACY COUNCIL, AND PLACER MINERS ASSOCIATION IN SUPPORT OF APPELLEES, MADISON D. LOCKE, et al.

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August, 1984

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TABLE OF CONTENTS

	Page
Table of Authorities Cited	iii
Interest of amici curiae	1
Opinion below	2
Statement of the case	3
Summary of argument	6
Argument	6
I	
The Mining Law of 1872 grants valuable property rights	6
A. By discovery of a mineral deposit and compliance with federal and state statutes a mineral locator may acquire a mining claim which is a valuable property right	6
B. As a full property right, the protections of the Fifth Amendment of the United States Constitution attach to a mining claim	7
C. Abandonment of a mining claim must be intentional	9
II	
Section 314 of the Federal Land Policy and Management Act is a procedural statute designed to determine abandonment and does not alter or affect the property rights acquired under the General Mining Law of 1872	11
III	
The Federal Land Policy and Management Act's procedures for determining abandonment violate the due process clause of the Fifth Amendment	14

TABLE OF CONTENTS

	Page
A. The Section 314 filing requirements fail to comply with the requirements of due process as announced in Mathews v. Eldridge	14
1. Private interests	14
2. Risk of erroneous deprivations and benefits of additional process	15
3. Governmental interest	16
B. A presumption of abandonment for late filings has no rational basis in fulfilling any congressional purpose	16
C. The conclusive presumption of abandonment from late filings may also be analyzed as an irrebuttable presumption that is in derogation of the due process clause	17
IV	
Well-established and applicable mining law does not work a forfeiture of a mining claim property right for failure to strictly comply with statutes or regulations, so long as there has been substantial compliance	19
Conclusion	21

TABLE OF AUTHORITIES CITED

Cases

	Page
Belk v. Meagher, 104 U.S. 279 (1881)	7, 9
Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963)	7
Black v. Elkhorn Mining Co., 163 U.S. 445 (1896)	9
Cameron v. United States, 252 U.S. 450 (1920)	7, 8
Davis v. Nelson, 329 F.2d 840 (9th Cir. 1964)	7
Garrard v. Silver Peak Mines, 82 F. 578 (D. Neb. 1897) aff'd, 94 F. 983 (9th Cir. 1899)	9, 10
Hammer v. Garfield Mining and Milling Co., 130 U.S. 291 (1889)	19
Harkrader v. Carroll, 76 F. 474 (D. Alaska 1896)	9, 10
Hickel v. Oil Shale Corp., 400 U.S. 48 (1970)	20
Ickes v. Virginia-Colorado Development Corp., 295 U.S. 639 (1935)	7, 9, 10, 19
Justice Mining Co. v. Barclay, 82 F. 554 (D. Nev. 1897)	10, 19
Kinney v. Fleming, 56 P. 723 (Ariz. 1899)	10
Lakin v. Sierra Buttes Gold Mining Co., 25 F. 337 (Cir. Ct. D. Cal. 1885)	10
Little v. Streater, 452 U.S. 1 (1981)	14
Locke v. United States, 577 F. Supp. 472 (D. Nev. 1983)	2, 3, 4, 5, 17, 18
Mathews v. Eldridge, 424 U.S. 319 (1976)	13, 14, 16
N. L. Industries v. Watt, Civ. No. LV 82-176 (RDF) (D. Nev. March 16, 1984)	11

CASES

	Page
North American Transportation & Trading Company v. United States, 53 Ct. Cl. 424 (1918), aff'd, 253 U.S. 330 (1920)	9
Orchard v. Alexander, 157 U.S. 372 (1895)	8
Peoria and Colorado Milling & Mining Co. v. Turner, 79 P. 915 (Colo. 1905)	10
Rogers v. United States, 575 F. Supp. 4 (D. Mont. 1982)	18
Street v. Delta Mining Co., 112 P. 701 (Mont. 1910)	10
Strickland v. Commercial Mining Co., 104 P. 965 (Or. 1909)	10
Texaco v. Short, 454 U.S. 516 (1982)	12, 13, 14
Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979)	11
Union Oil Co. v. Smith, 249 U.S. 337 (1919)	10
Vlandis v. Kline, 412 U.S. 441 (1973)	17, 18
Weinberger v. Salfi, 422 U.S. 749 (1975)	16, 18
Wilbur v. United States ex rel. Krusinic, 280 U.S. 306 (1930)	7, 19

CONSTITUTION

United States Constitution, Fifth Amendment	7, 8, 9, 18

RULES

Supreme Court Rules:	
No. 32	5
No. 36	1

STATUTES

	Page
Common Varieties Act, 30 U.S.C. § 611	4
Federal Land Policy and Management Act:	
§ 302, 43 U.S.C. § 1732	12
§ 314, 43 U.S.C. § 1744	2, 4, 11, 13-14, 16-18, 20-21
§ 314(a), 43 U.S.C. § 1744(a)	4
§ 314(c), 43 U.S.C. § 1744(c)	12, 14
Mineral Leasing Act of 1920, 30 U.S.C. § 241(a)	20
Mining Law of 1872, 30 U.S.C.:	
§ 21, et seq.	2, 3, 6
§ 22	7
§ 26	7, 20
90 Stat. 2743 (1976)	2

OTHER AUTHORITIES

Keplin, Texaco, Inc. v. Short: Dormant Minerals and Due Process—A Case for the Irrebuttable Presumption Doctrine?, 60 Denver L.J. 537 (1983)	13
Rocky Mountain Mineral Law Foundation, 2 American Law of Mining 195-96 (1981)	10
S. Rep. No. 853, 94th Cong., 2d Sess. 64-65 (1975)	11
Teichman, Dormant Mineral Acts and Texaco, Inc. v. Short: Undermining the Taking Clause, 32 Amer. Univ. L. Rev. 157 (1982)	13
Tuttle, Comment, 51 Univ. of Cincinnati L. Rev. 452 (1982)	13
43 C.F.R. § 3833.2-1 (1983)	4, 17

No. 83-1294

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1984

UNITED STATES OF AMERICA, et al.,
Appellants,

vs.

MADISON D. LOCKE, et al.,
Appellees.

On Appeal from the United States District Court for the District of Nevada

BRIEF AMICUS CURIAE OF ALASKA MINERS ASSOCIATION, CALIFORNIA MINING ASSOCIATION, NEVADA MINING ASSOCIATION, MINERS ADVOCACY COUNCIL, AND PLACER MINERS ASSOCIATION IN SUPPORT OF APPELLEES, MADISON D. LOCKE, et al.

INTEREST OF AMICI CURIAE

This brief amicus curiae is submitted on behalf of the Alaska Miners Association (AMA), the Miners Advocacy Council (MAC), the California Mining Association (CMA), the Placer Miners Association (PMA), and the Nevada Mining Association (NMA), pursuant to Supreme Court Rule No. 36. Consent to the filing of this brief has been granted by counsel for the parties and has been lodged with the clerk of this Court.

CMA is a nonprofit, tax-exempt corporation organized and existing under the laws of California. AMA, PMA,

and MAC are nonprofit, tax-exempt associations and corporations organized and existing under the laws of Alaska. NMA is a nonprofit, tax-exempt corporation organized under the laws of Nevada.

AMA, MAC, CMA, PMA, and NMA are organizations composed of members of the mineral industry. These organizations exist for the purpose of promoting a healthy climate for the mining industry in Alaska, California, and Nevada. These organizations are dedicated to ensuring that government regulations affecting exploration and development activities are tailored to meet statutory objectives while not placing unnecessary burdens upon the mining industry. Individual members of AMA, MAC, CMA, PMA, and NMA own mining claims located pursuant to the Mining Law of 1872, 30 U.S.C. § 22, *et seq.*, and are subject to the filing requirements of the Federal Land Policy and Management Act (FLPMA), 90 Stat. 2743 (1976), § 314 (codified at 43 U.S.C. § 1744). These organizations have members whose claims have been terminated by the Bureau of Land Management (BLM) for failure to meet BLM's strict interpretation of Section 314 filing requirements. Accordingly, these members' very livelihoods will be directly impacted by the Court's decision in this case. CMA, MAC, AMA, PMA, and NMA, due to their unique public interest perspective, believe that they can provide this Court with a more complete argument regarding the issues at stake in this case such as the impact and propriety of procedures used to terminate valuable mining claims and the degree of compliance required with the filing regulations of FLPMA.

OPINION BELOW

The opinion of the United States District Court for the District of Nevada is reported in *Locke v. United States*, 553 F. Supp. 472 (D. Nev. 1983).

STATEMENT OF THE CASE

Pursuant to the Mining Law of 1872, 39 claims owned by the appellees, Marion and Madison D. Locke, were located between May 8, 1952, and July 20, 1955. Until the controversy in question arose all of the state and federal requirements relating to the discovery, location, and maintenance of unpatented mining claims were fully met by the appellees. Over $4 million in materials have been produced from the appellees' claims, with over $1 million produced alone during the 1979-80 assessment year preceding BLM's unilateral declaration of abandonment. *Locke*, 553 F. Supp. at 474.

When Congress enacted the Mining Law of 1872, 30 U.S.C. § 22, *et seq.*, it established a system whereby individuals could, upon their own initiative, acquire the right to discover, locate, and remove minerals on public lands belonging to the federal government. This system enabled individuals to obtain valuable property rights in the federal lands in exchange for the discovery and development of this nation's mineral resources.

In the 112 years since 1872 the general mining law has been a tremendous and unparalleled boon to this nation's economy, promoting industrial development and human settlement of the west to a degree no other government program could possibly have achieved. This success continues today. As a result of individual free enterprise efforts, new mineral discoveries are still made on those lands not yet closed to mineral discovery.

Despite the success of the general mining law, by 1976 it became clear to Congress that federal land managers were faced with an impediment in maintaining effective land management policies. Specifically, federal land managers had no workable method of determining which federal lands were subject to the rights of mineral claimants

and which lands were unencumbered. Land managers often could not accurately determine the location of mining claims, let alone whether the claims were abandoned or not. For this reason Congress passed Section 314 of FLPMA (codified at 43 U.S.C. § 1744). Section 314 established a central filing system for all mining claims. Such a filing system complemented the existing state and county filing systems.

Among other things, this system established procedures for the determination of whether a mining claim has been abandoned. These procedures are at the core of the dispute before this Court. Amici believe that the procedures represent a wide departure from all established mining law and precedent and they do not comport with the minimum due process requirements necessary before a mining claim property right can be extinguished.

In this case the Lockes were required to file a notice of assessment work "prior to December 31." FLPMA § 314(a). On December 22 the Lockes' daughter attempted to file this notice in the Ely, Nevada, office of BLM. BLM refused to accept the notice stating that it could only be filed in Reno "'*on* or before December 31, 1980.'" *Locke v. United States*, 573 F. Supp. at 474 (emphasis added). Following these instructions the notice was filed in the Reno office on December 31, 1980. However, because the BLM interprets "prior to December 31" to mean "on or before December 30" (43 C.F.R. § 3833.2-1 (1983)), the Lockes were notified on April 4, 1981, that their claims were declared "abandoned and void" for failure to timely file. Because sand and gravel deposits cannot be presently located on the public domain due to the Common Varieties Act, 30 U.S.C. § 611, passed in 1955, the Lockes are unable to relocate their mining claims and have been permanently deprived of this valuable property right which enabled them to earn a living.

The Lockes have suffered this tremendous loss because their claims were assumed abandoned even though they were not in fact abandoned, and this assumption was made without any notice or inquiry into whether they actually intended to abandon their claims and despite actual and substantial compliance with FLPMA.

The Lockes are not alone in losing their valuable property rights for the one day late filing of valuable mining claims. In Utah, at least 1,460 claims have been invalidated by the state BLM office for one day late filings. *See* Exhibit A.[1] At least 198 claims were invalidated by the Montana BLM office for one day late filings. *See* Exhibit B. Eleven mining claims were invalidated by the Wyoming BLM office for one day late filings. *See* Exhibit C. Finally, there were approximately 500 such invalidations in Arizona. *See* Exhibit D. Other state BLM offices have been unable to provide amici with information concerning the number of mining claim invalidations due to one day late filings under FLPMA. In addition, the Utah, Montana, and Wyoming offices estimate that approximately 7,279 claims have been invalidated for "late filings." Such late filings include December 31 filings. *See* Exhibits A, B, and C.

The invalidation of the Lockes' claims was held to be an unconstitutional deprivation of procedural due process by the Federal District Court of Nevada in *Locke v. United States*, 573 F. Supp. at 478. In addition, that court found that the Lockes had substantially complied with the statute and could not therefore be denied their valuable mining right on the basis of a one day late filing. *Locke*, 573 F. Supp. at 479.

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[1] In compliance with Supreme Court Rule No. 32, all exhibits referred to herein have not been attached to this brief. All exhibits, including Exhibit A referred to above, have been lodged with the clerk of this Court.

SUMMARY OF ARGUMENTS

1. The Mining Law of 1872 established a system whereby individuals could obtain valuable property rights through the location of mineral deposits. These rights are subject to superior intervening rights or forfeiture only if the original location and mineral claim is intentionally abandoned.

2. FLPMA sets up procedures to determine when there is an abandonment of a mining claim. FLPMA does not alter or affect property rights acquired under the Mining Law of 1872; it only establishes new procedures for determining the validity of those rights.

3. FLPMA procedures used to determine abandonment violate the Due Process Clause of the Fifth Amendment.

4. Well-established and applicable mining law does not work a forfeiture of a mining claim property right for failure to strictly comply with statutes or regulations, so long as there has been substantial compliance with the appropriate rules. The Lockes have substantially complied with all relevant statutes and regulations.

ARGUMENT

I

THE MINING LAW OF 1872 GRANTS VALUABLE PROPERTY RIGHTS

A. By Discovery of a Mineral Deposit and Compliance with Federal and State Statutes a Mineral Locator May Acquire a Mining Claim Which Is a Valuable Property Right

The general Mining Law of 1872, 30 U.S.C. § 21, *et seq.*, provides for the location of mining claims by those who have discovered mineral deposits:

> "[A]ll valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase . . . ." 30 U.S.C. § 22.

Furthermore, locators of mining claims on such mineral deposits have the exclusive right of possession to that deposit:

> "The locators of all mining locations . . . so long as they comply with the laws of the United States, and with State, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges . . . ." 30 U.S.C. § 26.

The right to locate a mining claim, after the discovery of a mineral deposit, with the right of exclusive possession of that deposit constitutes a valuable property right in a valid mining claim. As stated by this Court in *Wilbur v. United States ex rel. Krushnic*, 280 U.S. 306, 316 (1930), "[t]he claim is property in the fullest sense of that term . . . ." *See also Best v. Humboldt Placer Mining Co.*, 371 U.S. 334, 335 (1963); *Ickes v. Virginia-Colorado Development Corp.*, 295 U.S. 639, 644 (1935); *Cameron v. United States*, 252 U.S. 450, 456 (1920); *Belk v. Meagher*, 104 U.S. 279, 283 (1881); and *Davis v. Nelson*, 329 F.2d 840, 845-46 (9th Cir. 1964) (right to locate claim is a property right against United States).

B. As a Full Property Right, the Protections of the Fifth Amendment of the United States Constitution Attach to a Mining Claim

When a mineral deposit is properly discovered and located in accordance with the applicable state and federal statutes and regulations the mining claim becomes a fully vested property right. *Wilbur, supra.* As a full property

right the government may take action to curtail or destroy that right only after an appropriate notice and hearing, as provided for in the Fifth Amendment to the United States Constitution: "[N]or [shall any person] be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The nature of the property right attendant to an unpatented mining claim, and the scope of that right's due process protections were addressed by this Court in *Cameron v. United States*, 252 U.S. at 450. In that case, the land department alleged that a certain mining claim, located by Cameron at the head of the Bright Angel Trail in the Grand Canyon, was invalid for a lack of discovery. Cameron, who located the claim before the area was closed to mineral entry, disputed the Land Department's authority to bring the contest action. The Supreme Court held that the Land Department could make a determination that the claim was null and void, but the Court also stated that certain due process protections attached to such a determination. Specifically:

> "The Land Department has no power to strike down a claim arbitrarily, but so long as the legal title remains in the government, it does have power, *after proper notice and upon adequate hearing*, to determine whether the claim is valid, and, if it be found invalid, to declare it null and void." *Id.* at 460 (emphasis added).

This notice and hearing requirement was seen to derive from the Due Process Clause:

> " 'The government holds the legal title in trust for him, and he may not be dispossessed of his equitable rights without due process of law. Due process in such case implies notice and a hearing.' " *Id.* at 461, quoting *Orchard v. Alexander*, 157 U.S. 372, 382 (1895).

Indeed, when the government nullifies all rights in a mining claim, as with the Lockes in this case, the government has in effect taken those property rights for itself. This follows from the fact that title in mining claims that are determined invalid or abandoned reverts to the United States. *See Black v. Elkhorn Mining Co.*, 163 U.S. 445, 450 (1896); *Belk v. Meagher*, 104 U.S. 279; and *Harkreader v. Carroll*, 76 F. 474 (D. Alaska 1896). When there is a taking of a mining claim the nature of the property right is such that just compensation must be paid by virtue of the Fifth Amendment to the United States Constitution. This was the clear holding in *North American Transportation & Trading Company v. United States*, 53 Ct. Cl. 424 (1918), *aff'd*, 253 U.S. 330 (1920), where the United States government occupied a mining claim near Nome, Alaska, for a military base. The Court held that an unpatented mining claim is in nature an estate in fee and if such an estate is taken just compensation must be made therefor under the Fifth Amendment.

C. Abandonment of a Mining Claim Must Be Intentional

Like other property rights, a mining claim may be lost through abandonment. As stated in *Black v. Elkhorn Mining Co.*, 163 U.S. at 450, a locator's "interest in the claim may also be forfeited by his abandonment, with an intention to renounce his right of possession." Upon an abandonment, title to the claim reverts to the United States, and the minerals may be relocated by third parties, providing the land is still open to location. *Id.* at 450; *Belk v. Meagher*, 104 U.S. at 285; and *Harkreader v. Carroll*, 76 F. at 475.

However, in order for there to be abandonment the owner of the mining claim must have the intent to abandon. Indeed, the element of intent is central to the existence of an abandonment. *See Black v. Elkhorn Mining Co.*, 163 U.S. at 450; *see also Ickes v. Virginia-Colorado Development Corp.*, 295 U.S. at 643; *Garrard v. Silver Peak Mines*, 82 F. 578

(D. Neb. 1897) ("abandonment is always a question of intention"), *aff'd*, 94 F. 983 (9th Cir. 1899); *Justice Mining Co. v. Barclay*, 82 F. 554, 559 (D. Nev. 1897) ("abandonment of property is always a question of intention. It is a voluntary act"); *Harkrader v. Carroll*, 76 F. 474 ("abandonment is a matter of intention, and whenever the intention and an actual surrender of the claim are united, the abandonment is complete and operates instanter to restore the title to the United States"); *Lakin v. Sierra Buttes Gold Mining Co.*, 25 F. 337, 343 (Cir. Ct. D. Cal. 1885); Rocky Mountain Mineral Law Foundation, 2 *American Law of Mining* 190-96 (1981).

The finding of intention to abandon a mining claim, or not to abandon, is manifested by surrounding circumstances. *Union Oil Co. v. Smith*, 249 U.S. 337, 349 (1919) (nonperformance of the annual labor indicates intent to abandon). *Garrard v. Silver Peak Mines*, 82 F. at 501 (erection "of large and expensive improvements" negated allegation of abandonment); *Harkrader v. Carroll*, 76 F. at 475 (leaving a claim "sick and disgusted" with no intention to return constitutes an abandonment); *Street v. Delta Mining Co.*, 112 P. 701, 705-06 (Mont. 1910) (abandonment must be shown by clear and convincing evidence); *Strickland v. Commercial Mining Co.*, 104 P. 965, 967 (Or. 1909) (leaving a mining claim for many years shows abandonment); *Peoria and Colorado Milling & Mining Co. v. Turner*, 79 P. 915, 917 (Colo. 1905) (mere absence alone does not show abandonment when no evidence of intent to abandon); and *Kinney v. Fleming*, 56 P. 723, 724 (Ariz. 1899) (leaving claim with no intent to return constitutes abandonment). Indeed, the necessity of finding intention to abandon is so crucial that even the failure to perform assessment work is not grounds alone for a charge of abandonment. *Ickes v. Virginia-Colorado Development Corp.*, 295 U.S. at 646. In all of these cases, where the issue of claim abandonment

was decided, the decision has followed a judicial or administrative hearing where the facts relevant to the presence of an intention to abandon were considered. The prerequisite of intention has always been central to any finding of abandonment of a property right, and such an intention can be determined only after due process of law. No case has indicated that there might be abandonment without a finding of an intention to abandon.

II

SECTION 314 OF THE FEDERAL LAND POLICY AND MANAGEMENT ACT IS A PROCEDURAL STATUTE DESIGNED TO DETERMINE ABANDONMENT AND DOES NOT ALTER OR AFFECT THE PROPERTY RIGHTS ACQUIRED UNDER THE GENERAL MINING LAW OF 1872

The recordation requirements of Section 314 of FLPMA, by which a record of all mining claims must be filed with BLM, was enacted to give land managers a procedural mechanism for dealing with stale mining claims which hindered the land use planning process. As stated in Senate Report on FLPMA, Section 314 was enacted to

> "address a particular *procedural* problem concerning the registration of mining claims—a problem which is particularly frustrating to the public land manager. The source of this problem is what is often termed 'stale claims.' . . . [Such claims] create significant uncertainty regarding the actual extent of valid locations. . . . These claims constitute a cloud on the title of a large portion of the Federal lands." S. Rep. No. 853, 94th Cong., 2d Sess. 64-65 (1975) (emphasis added) quoted in *Topaz Beryllium Co. v. United States*, 479 F. Supp. 309, 313 (D. Utah 1979). *See also N. L. Industries v. Watt*, Civ. No. LV 82-176 (RDF) (D. Nev. March 13, 1984).

The filing requirements of FLPMA thus address a "procedural problem" to enable federal land managers to determine where active mining claims still exist. The annual requirements for assessment work or notice of intention to hold were designed to facilitate land management by creating procedures by which federal land managers could determine whether or not a mining claim has been abandoned.[8] The FLPMA procedures did not alter the substantive rights created under prior law.

In *Texaco v. Short*, 454 U.S. 516 (1982), this Court upheld an Indiana statute that declared that severed mineral estates that had not been used for a period of 20 years, automatically lapsed and reverted to the surface owner. That statute was a mere adverse possession statute that rectified prior state law which had precluded a showing of adverse possession on a subsurface mineral estate by a surface owner. The Indiana statute established substantive conditions limiting the rights involved. This Court held that the "State has the power to condition permanent retention of that property right on the performance of reasonable conditions that indicate a present intent to retain the interest." *Id.* at 526. The statute did not prescribe arbitrary procedures by which the substantive condition would

[8]Section 314(c) of FLPMA (codified at 43 U.S.C. § 1744(c)) declares that a failure to file shall "constitute an abandonment of the mining claim . . . ." Because this section refers to an "abandonment" rather than a forfeiture, it is clear that Congress did not intend to mean forfeiture and there is no indication that Congress intended to alter the meaning of the term abandonment. Furthermore, Section 302 (43 U.S.C. § 1732) declares that except for the Section 314 requirements nothing in FLPMA "shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act . . . ." Because Congress did not eliminate the element of intent from the concept of abandonment, the failure to file should merely constitute evidence of intent to abandon, especially since this conclusive presumption of abandonment is not in keeping with the requirements of due process.

be found to have occurred. Specifically, in Indiana's dormant mineral act there were three ways to maintain a subsurface mineral estate which together afforded the requisite due process (1) actual production or collection of rents and royalties, (2) the payment of taxes, or (3) the filing of a statement evidencing intent to maintain the property interest. If the Indiana statute were applicable to the Lockes' situation, they would have clearly met the first two of these mechanisms and substantially met the third.

In contrast to the statute in *Texaco v. Short*, Section 314 of FLPMA does not condition the grant of substantive rights.[9] It was previously established that rights in mining claims could be abandoned. *See* Argument I.C., *supra*. Section 314 merely sets forth a procedure for determining whether the abandonment has occurred. It is this procedure which fails to measure up to the *Mathews v. Eldridge*, 424 U.S. 319 (1976), test. And it is the *procedural*

[9]The commentators have uniformly recognized the nonprocedural, substantively limiting character of the Indiana statute in *Texaco v. Short*:

> "Although the state of Indiana defines a severed mineral estate as a vested property interest to be afforded the same protection as fee simple titles, the state, through the Mineral Lapse Act, limits the duration of the estate . . . just as a state may create a property interest entitled to constitutional protection, it may condition permanent retention of that interest on the performance of reasonable statutory requirements that indicate a present intent to retain the interest." Tuttle, *Comment*, 51 Univ. of Cincinnati L. Rev. 452, 463 (1982).
>
> "The state is the entity from which all property rights flow, and is, therefore, free to condition the retention of property . . . . The court deferred to the state legislature's definition of property in ascertaining the rights attending mineral fee ownership." Teichman, *Dormant Mineral Acts and Texaco, Inc. v. Short: Undermining the Taking Clause*, 32 Amer. Univ. L. Rev. 157, 179 (1982). *See also* Koplin, *Texaco, Inc. v. Short: Dormant Minerals and Due Process—A Case for the Irrebuttable Presumption Doctrine?*, 60 Denver L.J. 337 (1983).

character of Section 314, as opposed to the state-mandated *substantive limitation* of property rights defined by the Indiana statute, that distinguishes the plight of the Lockes in this case from that of appellant in *Texaco v. Short*.

III

THE FEDERAL LAND POLICY AND MANAGEMENT ACT'S PROCEDURES FOR DETERMINING ABANDONMENT VIOLATE THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

A. The Section 314 Filing Requirements Fail to Comply with the Requirements of Due Process As Announced in Mathews v. Eldridge

There are "three elements to be evaluated in determining what process is constitutionally due: the private interests at stake; the risk that the procedures used will lead to erroneous results and the probable value of the suggested procedural safeguard; and the governmental interests affected." *Little v. Streater*, 452 U.S. 1, 13 (1981), citing *Mathews v. Eldridge*, 424 U.S. at 335.[4]

1. Private Interests

As demonstrated above the private interests at stake are substantial, namely, the private property interests represented by unpatented mining claims. Here, mining claims provided the Lockes their livelihood, and many other miners represented by amici derive their entire incomes from mining claims. Private property rights have been and continue to be an essential element of American liberty, and as such are protected by the United States Constitution.

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[4]Although appellants assert "Section 314(c) comports fully with the requirements of procedural due process," appellants' brief at 23 (footnote omitted), amici have searched the 12 pages of appellants' due process argument without finding a citation to *Mathews v. Eldridge*. Amici are at a loss as to how appellants have reached their conclusion without a *Mathews v. Eldridge* analysis.

2. Risk of Erroneous Deprivations and Benefits of Additional Process

The risk that the procedures used will lead to erroneous results is demonstrated to be extremely high. In response to Freedom of Information Act requests by PLF, Utah, Arizona, Montana, and Wyoming BLM offices have determined that approximately 2,169 claims have been "presumed abandoned" because the proof of assessment work or notice of intent to hold was filed on December 31 rather than December 30. *See* Exhibits A, B, C, and D lodged separately with the clerk. Eight of the 12 western BLM regional offices have been unable to provide the relevant data. There is every reason to believe that their figures are every bit as high. In addition, three of the regional BLM offices have estimated that approximately 7,279 claims were deemed abandoned because of filings made on or later than December 31, 1980 ("late filings"). *See* Exhibits A, B, and C. The fact that the required filing was made establishes that there was no intention to abandon any of these approximately 2,169 mining claims voided because they were filed one day late or any of the 7,279 claims voided because they were filed "late." These figures show the risk of error to be overwhelming.

This devastating risk of error could be easily reduced through simple, inexpensive additional procedures. The presence or absence of any intent to abandon could easily be determined by conducting a simple, informal hearing upon receipt of a late filing, or even through a requirement that a written explanation be provided upon a late filing. BLM had every opportunity to do this when they notified the Lockes of the "abandonment." This procedure would fully provide an adequate procedural mechanism for determining intent. In addition, the mere act of acceptance of the filing in other local BLM offices, such as Ely, Nevada, would have avoided the results in this case with practically no additional burden on the government.

3. Governmental Interest

The governmental interest sought to be effectuated by Section 314 is improved federal land management through the reduction of uncertainty created by the presence of "stale" mining claims. The statute seeks to promote the government's obvious interest in knowing which portions of the public lands are subject to active mining claims. But the purpose of this inventory is not served by counting active mining operations, such as those of the Lockes, as abandoned. Indeed such an erroneous determination defeats the intended government interest every bit as much as the previous situations of considering abandoned claims to be active. A short and simple hearing prior to a final abandonment determination would thus serve the government's interest as well as the Lockes'.

All the elements of the *Mathews v. Eldridge* test thus point to the need for some kind of hearing in which the Lockes may present the true facts related to the active status of their claims.

B. A Presumption of Abandonment for Late Filings Has No Rational Basis in Fulfilling Any Congressional Purpose

No matter what type of interest is affected by statutory procedures, Congress still may not use "criteria which bear no rational relation to a legitimate legislative goal." *Weinberger v. Salfi*, 422 U.S. 749, 772 (1975). In this case the requirement that recordations and filing notices pertinent to mining claims be filed with the BLM serves the legitimate purpose of facilitating federal land management. However, the criterion that all claims filed even one day late shall be conclusively presumed abandoned is not based on a demonstrated rational relation to the facilitation of federal land use planning. In this case, as of December 31 the BLM was clearly on notice that the Lockes had every intention to maintain their mining claims. In fact, when the BLM

notified the Lockes that the claims were void they could easily have made a further inquiry into whether or not the claims had in fact been abandoned without any adverse impact on land use planning. Furthermore, the Lockes initially attempted to file the required documents on December 22 in Ely, Nevada. *Locke*, 573 F. Supp. at 474. BLM refused to accept the documents, telling the Lockes that they must be filed in Reno "on or before December 31." *Id.* Here the refusal to accept the documents when presented in Ely likewise demonstrates no rational relation to the congressional purpose of facilitating land use planning. This is a clear case of an arbitrary and irrational adherence to strict procedures resulting in losses of valuable property rights which can serve no conceivable or legitimate congressional purpose. Such losses are not favored by the law and there is no indication that they here serve any congressional purpose.[9]

C. The Conclusive Presumption of Abandonment From Late Filings May Also Be Analyzed as an Irrebuttable Presumption That Is in Derogation of the Due Process Clause

Amici have demonstrated above that the one day late automatic abandonment created by Section 314 violates both substantive and procedural due process. Nevertheless, since the District Court below relied substantially on an irrebuttable presumption analysis in finding Section 314 unconstitutional, amici find it appropriate to capsulize that argument here. The irrebuttable presumption analysis of *Vlandis v. Kline*, 412 U.S. 441 (1973), is appropriate when the threatened right enjoys constitutionally protected

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[9]Moreover, a regulation prescribing a filing "on or before December 30" (43 C.F.R. § 3833.2-1) to effectuate the language of Section 314 of FLPMA requiring filings "prior to December 31" is an irrational interpretation that actually reduces any value of notice from the statute to locators.

status. *Weisberger v. Salfi*, 422 U.S. at 772. Valuable property rights, protected by the Fifth Amendment of the United States Constitution, certainly enjoy protected status. Therefore, the irrebuttable presumption analysis of *Vlandis v. Kline* is appropriate in this case.

As the District Court in *Rogers v. United States*, 575 F. Supp. 4 (D. Mont. 1982) (Section 314 held unconstitutional on due process grounds) and the lower court in this case *Locke v. United States*, 573 F. Supp. at 475, stated, there is a two-prong test for the presumption analysis. "If '"the presumption is not necessarily or universally true in fact" and the government has available "reasonable alternative means of making the crucial determination,"' then due process demands a hearing to rebut the presumption." *Id.* at 475. Here the presumption that abandonment exists whenever a notice of assessment work is filed late is clearly not universally true. It is not true with the Lockes, and is not true with the 2,169 claims filed one day late in the BLM offices of Utah, Arizona, Montana, and Wyoming, nor with the 7,279 other claims filed "late." *See* Exhibits A, B, C, and D. Furthermore, the government has available to it a simple and readily available means of determining whether or not there has been an actual intent to abandon the subject mining claims. Specifically, a hearing could be held, or a written explanation for the delay could be demanded. Under no circumstances is the conclusive presumption of Section 314 a reasonable means of effectuating any congressional intent.[6]

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[6] In *Weinberger v. Salfi*, 422 U.S. at 782-83, it was clear that there was no feasible alternative to the irrebuttable presumption that certain marriages were shams entered into for purposes of collecting social security payments. Here any mineral claimant afforded a hearing to rebut the presumption of abandonment could easily show proof that significant labor or other work has been expended on a subject mining claim within the statutory period required for completing the assessment work.

IV

WELL-ESTABLISHED AND APPLICABLE MINING LAW DOES NOT WORK A FORFEITURE OF A MINING CLAIM PROPERTY RIGHT FOR FAILURE TO STRICTLY COMPLY WITH STATUTES OR REGULATIONS, SO LONG AS THERE HAS BEEN SUBSTANTIAL COMPLIANCE

Forfeitures are not favored by law and proof of a mining claim forfeiture must be unambiguous. The mining law favors locators against forfeitures and does not require strict compliance with all rules and regulations for a claim to be valid, so long as there is substantial and good faith compliance. It is clear that when a forfeiture is to be established, it must be upon "clear and convincing proof of the failure of the former owner to have work performed or improvements made . . . ." *Hammer v. Garfield Mining and Milling Co.*, 130 U.S. 291, 301 (1889); *Justice Mining Co. v. Barclay*, 82 F. 554 (Cir. Ct. Nev. 1897). These cases dealt with conflicting claims between rival claimants. When the government is involved, however, a forfeiture will not be found in the absence of any intervening rights or closure of the land to mineral entry. For example, when there has been a hiatus in the performance of assessment work, the government traditionally has gained no rights of forfeiture. *Ickes v. Virginia-Colorado Development Corp.*, 295 U.S. at 648 ("[s]o far as the government was concerned, failure to do assessment work for any year was without effect"); and *Wilbur, supra.* Indeed, the property right does not lapse upon a failure to do assessment work, and if work is resumed before any intervening rights attach "'[s]uch resumption does not *restore a lost* estate . . . ; it *preserves* an *existing* estate.'" *Ickes*, 295 U.S. at 646, citing *Wilbur*, 280 U.S. at 318 (emphasis in original). Clearly the law does not favor a forfeiture of mineral estates in favor of the government. For the same reason, the law should not favor the presumption of abandonment.

The underlying rationale behind these decisions is that where a locator has substantially complied in good faith with the statutory and regulatory requirements, he should not be punished for mere technical or minor irregularities. As explained in *Hickel v. Oil Shale Corp.*, 400 U.S. 48, 57 (1970): "where there had been substantial compliance with the assessment work requirements of the 1872 Act . . . the 'possessory title' of the claimant, granted by 30 USC § 26, will not be disturbed on flimsy or insubstantial grounds." In *Hickel* it was determined that the failure to do assessment work was more than substantial, and by virtue of the Mineral Leasing Act of 1920, 30 U.S.C. § 241(a), the government had an interest in finding a forfeiture of the mining claims whereby all interests in the land reverted to the United States. This is not the case before this Court. The so-called noncompliance with the assessment work requirements as modified by the procedures of FLPMA here is clearly insubstantial. An initial attempted filing on December 22 and a completed filing on December 31, where the statute requires filing "prior to December 31" is clearly a substantial compliance with the statute.[7] A filing on the 31st of December in order to comply with a statute that requires filing "prior to December 31" clearly does not demonstrate an intent to abandon mining claims. Indeed, any reasonably "late" filing is in substantial compliance with the law. Because the requirements of substantial compliance have been met, the Lockes must at the very least be afforded an opportunity to rebut any presumptions of intent to abandon their mining claims.

[7]The result reached in the Lockes' case is the more absurd since BLM has subsequently adopted Section 314 filing practices that create a substantial compliance standard. Claims postmarked December 30 are accepted at *anytime* until January 19 of the following year. Appellants' brief at 42 n.31. A hand-carried filing on December 31 is well within this standard. The additional "burden" created by such a substantial compliance standard clearly has only *de minimis* effects on the governmental interests identified at Section III. A.3., *supra*.

CONCLUSION

Congress established the FLPMA filing procedures of Section 314 to facilitate land management by the removal of stale claims, and not to confiscate claims for some other unarticulated purpose such as ridding federal lands of private property interests. Mining claims are inherently valuable property rights and cannot be disturbed without due process of law. In this case the presumption of abandonment should not be made until at least a minimal opportunity is provided to demonstrate a lack of intent to abandon. In any event, a reasonably late filing should be deemed to be substantially in compliance with the statute, and not a ground for a presumption of abandonment. It is therefore urged that the opinion of the lower court in this case should be affirmed.

Respectfully submitted,

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APPELLEE'S

BRIEF

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No. 83-1391

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

UNITED STATES OF AMERICA, *et al.*,
Appellants,

v.

MADISON D. LOCKE, *et al.*,
Appellees.

On Appeal from the United States District Court for the District of Nevada

---

APPELLEES' ANSWERING BRIEF

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QUESTIONS PRESENTED

1. Whether Section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1744, violates the Due Process Clause of the Fifth Amendment to the extent it provides that failure to file a timely notice of intention to hold a mining claim or affidavit of annual assessment work shall be deemed conclusively to constitute an abandonment of the claim.

2. Whether Section 314 is satisfied by "substantial compliance" with its requirements, so that appellees retained their mining claims by filing one day late, or whether the Statute should be construed to avoid a forfeiture.

TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	8
ARGUMENT	
I. SECTION 314(c) OF THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976, 43 U.S.C. 1744(c) DENIES APPELLEES DUE PROCESS	10
A. Unpatented Mining Claims are Protected by Due Process	10
B. Irrebuttable Presumption Analysis is Appropriate	12
C. Lockes Would Also Prevail Under *Morrissey v. Brewer*	24
D. The Statute Should Be Construed to Avoid a Forfeiture	27
E. The Lockes Have Substantially Complied With The Act	28
CONCLUSION	30
APPENDIX	1a

TABLE OF AUTHORITIES

CASES: Page

Bell v. Burson, 402 U.S. 535 (1971) 8, 13
Best v. Humboldt Mining Co., 371 U.S. 334 (1963) .. 11
Black v. Elkhorn Mining Company, 163 U.S. 449 (1896) 11
Cameron v. United States, 252 U.S. 450 (1920) 24
Ernst & Ernst v. Hockfelder, 425 U.S. 185 (1976) .. 14
Forbes v. Gracey, 94 U.S. 766 (1877) 11
Heiner v. Donnan, 285 U.S. 312 (1932) 8, 13
Hickel v. Shell Oil Co., 400 U.S. 48 (1970) 10, 29
Ickes v. Virginia-Colorado Development Corp., 295 U.S. 639 (1935) 29
Leary v. United States, 395 U.S. 6 (1965) 8, 13
Manuel v. Wulff, 152 U.S. 510 (1894) 11
Mathews v. Eldridge, 424 U.S. 319 (1976) 9, 24, 26
Memphis Light, Gas and Water District v. Craft, 436 U.S. 1 (1978) 11
Mobile, Jackson & Kansas City Railroad v. Turnipseed, 219 U.S. 35 (1910) 8, 12
Moore v. DeBernardi, 47 Nev. 33, 213 Pac. 1041 (1923) 16
Morrissey v. Brewer, 408 U.S. 471 (1972) 9, 11, 24
Rogers v. United States, 575 F.Supp. 4 (D. Mont., 1982) 11, 19
St. Louis Mining & Milling Co. v. Montana Mining Co., 171 U.S. 650 (1898) 11
Schlesinger v. Wisconsin, 270 U.S. 230 (1926) 8, 12
Stanley v. Illinois, 405 U.S. 645 (1972) 8, 13
Estate of Stanley Styles, 75 IBLA 272 (1983) 20
In the Matter of the Estate of Stanley Styles, Case No. 5848, Lander County, Nevada, District Court 20
Frank J. Tarantino, 77 IBLA 328 (1983) 20
Texaco, Inc. v. Short, 454 U.S. 516 (1982) 11, 22
Tot v. United States, 319 U.S. 463 (1943) 8, 13
United States v. Oregon, 336 U.S. 643 (1961) 14, 15
United States v. Romano, 382 U.S. 136 (1965) 8, 13

TABLE OF AUTHORITIES—Continued

Page

United States Railroad Retirement Board v. Fritz, 449 U.S. 166 (1980) 14
Vlandis v. Kline, 412 U.S. 441 (1973) 8, 14, 19
Weinberger v. Salfi, 422 U.S. 749 (1975) 21
Wilbur v. United States, ex. rel. Krushnic, 280 U.S. 306 (1930) 10, 21, 29

STATUTES AND REGULATIONS:

30 USC § 28 29
30 USC § 611 ..... 2, 6
30 USC § 21, *et seq.* 2
43 USC §§ 1391-1400 2
43 USC § 1744 ..... *passim*
43 C.F.R. 3851.3 29
Nev. Rev. Stat. 111.325 16
Nev. Rev. Stat. 517.230 ..... 2, 16
Nev. Rev. Stat. 362.100 22

MISCELLANEOUS:

122 Cong. Rec. 4052 (1976) 18
Public Land Law Review Commission, *One-Third of the Nation's Land: A Report to the President and to the Congress* (1970) 2, 11, 15, 18
2 Rocky Mountain Mineral Law Foundation, *The American Law of Mining* (1983) 16, 18
3 Sands, *Statutes and Statutory Construction*, § 15.03, 6-7 (4th Ed., 1974) 28
Irrebuttable Presumptions as an Alternative to Strict Scrutiny: From Rodriguez to LaFleur: 62 Geo. L.J. 1173 (1974) 19
S. Rep. 94-583, 94th Cong., 1st Sess. 65 (1975) 15

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-1394

UNITED STATES OF AMERICA, *et al.*,
Appellants,

v.

MADISON D. LOCKE, *et al.*,
Appellees.

On Appeal from the United States District Court for the District of Nevada

---

APPELLEES' ANSWERING BRIEF

STATEMENT OF THE CASE

Appellees (hereinafter "Lockes") are the owner-operators of a group of ten unpatented placer mining claims located on the public lands near Ely, Nevada.[1] The

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[1] The district court's opinion is reprinted as Appendix A to the Appellants' Jurisdictional Statement (J.S.). The facts presented herein were uncontested below and are discussed in the opinion of the district court, 573 F.Supp. 472 at 473-474, J.S. 1a-3a. No evidence was presented by the Appellants below. The district court's findings of fact are based on evidence produced by the Lockes before the Interior Board of Land Appeals and re-introduced in the district court.

claims are valuable for their gravel and building materials and were located by the Lockes' predecessors in 1952 and 1954 prior to the passage by Congress of the Common Varieties Act of 1955 (30 U.S.C. § 611) prohibiting prospective location of claims for gravel, building materials or other "common varieties." The Lockes' claims were located in accordance with the general mining laws of 1872 (30 U.S.C. § 21, *et seq.*).

The Lockes have operated the claims continuously since they purchased them in 1960 and support themselves, and their families, from the materials mined and sold from these claims. From 1960 to 1980 the Lockes produced and sold more than $4,000,000 worth of materials from the claims. During the 1979-1980 assessment year (during which period Appellants determined that the Lockes were "conclusively deemed to have abandoned" their claims) the Lockes mined and sold more than $1,000,000 worth of materials from the claims.

Prior to the passage of Section 314 of the Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, 90 Stat. 2743, 43 U.S.C. § 1744 (hereinafter "FLPMA" or the "Act"), at issue herein, the Lockes, like other miners, worked their claims and recorded affidavits of assessment work each year with the local County Recorder's Office pursuant to state law (Nev. Rev. Stat. 517.230).

In 1964 Congress set up the Public Land Law Review Commission (PLLRC), 43 U.S.C. §§ 1391-1400, consisting of members of the House and Senate, to study existing public land laws and to recommend changes where necessary. The Commission's report to the President and to Congress provided the basis for FLPMA. Public Land Law Review Commission, *One-Third of the Nation's Land: A Report to the President and to the Congress* (1970).

The PLLRC reviewed the mining law and determined that there were literally millions of abandoned mining

claims on the public lands which had been located over the century since 1872 clouding the government's title. The Commission recommended the following:

> Congress should establish a fair notice procedure (a) to clear the public lands of long-dormant mining claims, and (b) to provide the holders of existing mining claims an option to perfect their claims under the revised location provisions we recommend. Under such a procedure, failure to file proper notice of pre-existing claims with county and Federal agencies within a reasonable time would constitute conclusive evidence of abandonment. This would be somewhat analogous to state quiet-title actions and to surface right proceedings authorized by the Surface Use Act of 1955. Clearing the record of an estimated 5.5 million long-dormant claims would assist in achieving more efficient land planning and management by Federal agencies.
>
> Id., p. 130.

There is no indication that the Commission desired to interfere with operating mines. Rather, the Commission indicated that mining should be preserved for the benefit of the general economy and for the national defense:

> Our standard of living and our national defense are heavily dependent upon the availability of fuel and nonfuel minerals. National requirements for these products are an essential factor in the development of a rational policy for mineral development on our public lands.
>
> ...
>
> Many of the factors we take for granted in our standard of living would be impossible without reliable and economic supplies of minerals.
>
> ...
>
> [O]ur survival as a leading nation depends on our mineral supplies. The close relation between minerals and our national security is too apparent to require detailed explanation.
>
> Id., p. 121.

The report of the PLLRC provides a backdrop for the Act and emphasizes the intent of Congress to eliminate "long-dormant" claims while, at the same time, preserve operating mines for the benefit of the country.

As passed by Congress the Act[2] requires a miner who owned pre-FLPMA claims (e.g. the Lockes) to make the following filings with the Bureau of Land Management (BLM)[3] for each claim:

> First, on or before October 22, 1979, he must file a copy of the certificate or notice of location, a copy of the 1979 affidavit of performance of annual assessment work as recorded with the County Recorder and a description of the location of the mining claim sufficient to locate the lands on the ground.
>
> Second, prior to December 31st of each year after 1979 he must file a copy of the affidavit of annual assessment work as recorded with the County Recorder.

As stated by the statute:

> The failure to file such instruments as required by . . . this section shall be deemed conclusively to constitute an abandonment of the mining claim . . . by the owner.
>
> 43 U.S.C. § 1744(c).

As noted by the PLLRC, millions of mining claims had been located on the public domain since enactment of the 1872 Mining Law. Upon the failure of the owners of approximately 5.5 million "long dormant" claims to file with the BLM on or before October 22, 1979, those claims were forever eliminated from the public domain

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[2] The full text of the Act is printed at pp. 1a-3a of the Appendix hereto.

[3] In Nevada the BLM office in Reno is the repository for all filings in the state pursuant to FLPMA.

and the cloud on the title of the United States was thereby removed. As found by the district court herein:

> Once . . . those failing to [initially] file lost their claims, the purpose of the statute was met.
>
> J.S. 11a.

On October 19, 1979, the Lockes filed with the office of the BLM in Reno, Nevada, all documents required by them to be filed under the Act to protect each of their ten claims from forfeiture. The BLM opened a file on the Lockes and their claims were, thus, listed in the BLM records as active mining claims.

During the 1979-80 assessment year (September 1, 1979-August 31, 1980) the Lockes produced and sold more than $1,000,000 in materials from their claims. On August 29, 1980, they recorded their affidavits of annual assessment work with the White Pine County, Nevada, Recorder, as required by State law and as required by the Act.

The Lockes were unsure as to the deadline for filing their affidavits of assessment work with the BLM in 1980,[4] and the Lockes' daughter, Laura C. Locke, who worked in the business as an office clerk, inquired of the Ely, Nevada, district office of the BLM as to the time for filing. She was informed by BLM personnel in that office that the deadline for filing with the BLM was December 31st.[5]

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[4] 1980 was the first year the annual affidavit filing was required under the Act.

[5] The Appellants point out at footnote 22 of their opening brief that the BLM began sending reminder notices to owners of mining claims in 1980 reminding them that the deadline for filing annual affidavits was December 30, not December 31. Appellants state "We assume that appellees received a reminder notice from BLM in 1980." Appellants are incorrect in this assumption. The attorney for the Lockes was recently informed by Elaine Gumaga, Supervisory Conveyancing Examiner for the BLM in Reno, Nevada, who supervises the management of miners' files, that no reminder

On December 31, 1980, the Lockes made the approximately 700 mile round trip from Ely to Reno, Nevada, to hand deliver their affidavits of assessment work to the BLM. The BLM accepted and filed the affidavits on that day.

On April 4, 1981, the Lockes were served with four decisions of the BLM stating that their mining claims:

> are hereby declared abandoned and void [because] . . . your proof of labor was not received in this office by December 30, 1980.
>
> J.S. 22a.

The decision explained further:

> Subject to valid intervening rights of third parties or the United States, void or abandoned claims or sites may be relocated and, based on the new location date, the appropriate instruments may be refiled within the time periods prescribed by the regulations.
>
> J.S. 22a.

In fact, the Lockes could not relocate their claims because they are "common varieties" claims which cannot be located after 1955. 30 U.S.C. § 611. As found by the district court the claims had been taken by Appellants pursuant to the statute and restored to the public domain.

The Lockes timely appealed the declaration of abandonment to the Interior Board of Land Appeals (IBLA). They presented voluminous evidence to the IBLA that their claims had not been abandoned and that they were

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notice was sent to the Lockes during 1980. Ms. Guenaga stated that information in miners' files was fed into a BLM computer in Denver, Colorado commencing in 1980. All notices are then sent from the computer to the owners of mining claims. Information from the Lockes' files was not fed into the computer until March 30, 1981; consequently, no such notice to the Lockes was possible during 1980.

actively working the claims and had been actively working the claims since 1960. They presented production records and aerial photographs of the claims showing extensive workings on the various claims. They submitted a brief to the IBLA explaining their position and legal reasons why the April 4, 1981 decision of the BLM should be vacated.

The Lockes' appeal was unopposed by the Appellants; nevertheless on June 25, 1982, the IBLA dismissed the Lockes' action and affirmed the decision of the BLM. The IBLA refused to address the Lockes' constitutional arguments. J.S. 16a-21a.

The Lockes then filed an action in the United States District Court for the District of Nevada on September 2, 1982, to attack Section 14 of FLPMA, on the ground that, as applied to them, it results in a denial of due process in that it operates to take their property without compensation and without notice or an opportunity to be heard.

None of the foregoing facts was disputed and the parties filed cross motions for summary judgment to determine the constitutionality of Section 314 of FLPMA. On October 19, 1983, the district court entered its decision granting the Lockes' motion for summary judgment, ruling that the Act cannot be applied against the Lockes so as to deprive them of their property and that as applied to them it constitutes a denial of procedural due process under the Fifth Amendment of the Constitution of the United States of America. J.S. 10a. The district court held, further, that even if the statute is constitutional the Lockes "substantially complied" with its terms and their property is thereby not subject to the conclusive presumption of abandonment provisions of the statute. J.S. 11a-12a.

SUMMARY OF ARGUMENT

The Act sets up an irrebuttable presumption of abandonment in the following clear and unequivocal language:

> The failure to file such instruments as required [herein] shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.
>
> 43 U.S.C. 1744(c).

The Supreme Court has held from an early date that a party is denied due process by legislation which creates a presumption of one fact from the proof of another unless there is a rational connection between the fact proved and the fact presumed and unless a hearing is provided to permit the party to rebut the presumed fact. *Mobile, Jackson & Kansas City Railroad v. Turnipseed*, 219 U.S. 35 (1910); *Schlesinger v. Wisconsin*, 270 U.S. 230 (1926); *Heiner v. Donnan*, 285 U.S. 312 (1932); *Tot v. United States*, 319 U.S. 463 (1943); *United States v. Romano*, 382 U.S. 136 (1965); *Leary v. United States*, 395 U.S. 6 (1965).

In *Vlandis v. Kline*, 412 U.S. 441, 452 (1973) the Court stated that where a statute sets up an irrebuttable presumption, "when that presumption is not necessarily or universally true in fact, and when the State has reasonable alternative means of making the crucial determination," due process demands that the person affected be provided an opportunity to rebut the presumption. Accord, *Bell v. Burson*, 402 U.S. 535 (1971); *Stanley v. Illinois*, 405 U.S. 645 (1972).

The presumption of abandonment herein is not "universally true." Indeed, the Lockes mined and sold more than $1,000,000 in materials from their claims during the period the Appellants ruled that they were "deemed to have conclusively abandoned their claims." In addition, the Lockes recorded their affidavits of assessment work with the White Pine, Nevada, County Recorder on

August 29, 1980, and filed them again with the BLM, one day late, on December 31, 1980, acts which evince an intention not to abandon their claims. In these circumstances due process requires they be provided an opportunity to rebut the presumption of abandonment.

The Appellants have "reasonable alternative means" at their disposal for making the crucial determination of whether the Lockes, in fact, abandoned their claims. As noted by the district court, the BLM had "a file with [the Lockes'] name on it." *J.S.* 9a. It would have been a simple matter for the BLM to have notified the Lockes that they had filed one day late and to permit them to rebut the presumption.* Thus, the *Vlandis* test is fully met herein and the district court was correct in ruling that the statute denied the Lockes due process.

This Court should find the Act unconstitutional even if the irrebuttable presumption analysis is not employed. *Morrissey v. Brewer*, 408 U.S. 471 (1972), and *Mathews v. Eldridge*, 424 U.S. 319 (1976), establish a "flexible" due process test which considers the interest of the individual, the interest of the government and procedural safeguards which might be employed in addition to the governmental procedures. Under this analysis, it is immediately apparent that the grievous loss of the Lockes is far greater than any inconvenience to the government. The Appellants already send notices to all miners reminding them that they must comply with the Act. There

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*The Appellants indicate that the BLM presently sends notices to everyone, including those who file their affidavits timely as well as those who do not. Appellants' n. 22. The overwhelming majority of miners file their affidavits timely; there are only a few who, for various reasons, do not. It is not overly burdensome for the BLM to notify those few and to provide them with a hearing regarding their intention to abandon their claims. Such a "hearing" need not be expensive or time consuming, but could amount to a simple requirement that the miner whose claims are about to be forfeited supply some evidence of his intention not to abandon. *See, e.g. Mathews v. Eldridge*, 424 U.S. 319 (1976).

would, thus, be no additional burden on the government to inquire of a miner as to whether he intended to abandon his claim prior to a declaration of forfeiture.

FLPMA is ambiguous in that it is uncertain whether forfeiture is required upon a failure to file an annual affidavit or, on the other hand, failure to file the affidavit timely. The statute seems to indicate that a forfeiture will occur only if an affidavit is never filed at all.

Penal statutes must be strictly construed and in the instant case the Court should construe the Act so as to prevent a forfeiture.

Even if the statute is constitutional, the Lockes substantially complied with its provisions by filing one day late. *Hickel v. Shell Oil Co.*, 400 U.S. 48 (1970), indicates that substantial compliance is sufficient under the assessment work statutes and that the general policy of the courts is to prevent loss of miners' "possessory title" on "flimsy or insubstantial grounds."

ARGUMENT

I. SECTION 314(c) OF THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976, 43 U.S.C. 1744(c) DENIES APPELLEES DUE PROCESS

A. Unpatented Mining Claims Are Protected by Due Process

Appellees' mining claims constitute "property" entitled to due process protections:

> [An unpatented mining] claim is property in the fullest sense of that term; and may be sold, transferred, mortgaged and inherited without infringing any right or title of the United States. The right of the owner is taxable by the state; and is "real property."
>
> *Wilbur v. United States, ex rel. Krushnic*, 280 U.S. 306, 317 (1930)

See, also, St. Louis Mining & Milling Co. v. Montana Mining Co., 171 U.S. 650, 655 (1898); *Forbes v. Gracey*, 94 U.S. 766 (1877); *Manuel v. Wulff*, 152 U.S. 510 (1894); *Black v. Elkhorn Mining Company*, 163 U.S. 449 (1896); *Best v. Humboldt Mining Co.*, 371 U.S. 334, 335 (1963); *Rogers v. United States*, 575 F.Supp. 4 (D. Mont., 1982).

The Lockes' property is entitled to due process protections since their mineral rights give rise to a "legitimate claim of entitlement." *Memphis Light, Gas and Water District v. Craft*, 436 U.S. 1, 12 (1978).[7]

We do not contest the contentions of the Appellants that the government also has a protectable property interest. We do, however, take issue with statements by the Appellants that Congress may regulate the public lands without regard to the property rights of miners, including the Lockes (*see*, e.g., Appellants' statement at p. 16 of their brief that the power of Congress to regulate the public lands is "without limitations").

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[7] Appellants attempt to play down the nature of the Lockes' property rights and argue that miners obtain their mining rights "without paying any royalty to the United States" (Appellants' brief p. 2) and that a miner may "remove and sell minerals without any payment to the United States" (Appellants' brief p. 16). Appellants also argue that "the property interest at issue in this case is somewhat weaker than the interest considered in *Texaco, Inc. v. Short*." (Appellants' brief n. 17). Appellees, in fact, own "property in the fullest sense of that term" *Wilbur*, supra, and own the exclusive mining rights in their claims. Further, as recognized by the PLLRC, miners expend tremendous sums developing their claims for the benefit of the general economy, in "an expensive, long-term and high risk search effort." *One-Third of the Nation's Land*, *supra*, at 122. The Supreme Court has recognized that the "weight" of the interest is not controlling. The issue is "whether the nature of the interest is within the contemplation of the liberty or property language of the Fourteenth Amendment." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

B. Irrebuttable Presumption Analysis is Appropriate

Section 314(c) of the Act sets up an irrebuttable presumption that declares the Lockes' mining claims "conclusively abandoned" because they filed their affidavit one day late, on December 31, 1980 instead of December 30, 1980. Upon the declaration by the Appellants that the subject claims had been "abandoned," the property became restored to the public domain and became the property of the government.

Appellees contend, and the district court so found, that the forfeiture of the Lockes' property rights resulted in a taking "sufficient to trigger the due process protections of the Fifth Amendment." J.S. 4a.

This Court has held from an early date that where an irrebuttable presumption is set up by legislation a party whose rights are adversely affected is entitled to a hearing to rebut the presumption if the presumed fact is not universally true and if the government has reasonable alternative means to rebut the presumption. In *Mobile v. Turnipseed*, 219 U.S. 35 (1910), the Court upheld a Mississippi statute providing that injuries arising out of the running of a railroad "shall be prima facie evidence of the want of reasonable skill and care" by the railroad company. The Court stated that in order for a statute which creates a "legislative presumption of one fact from proof of another" to meet the requirements of the due process clause or the equal protection clause,

> it is only essential that there shall be some rational connection between the fact proved and the ultimate fact presumed. . . . So, also, it must not . . . operate to preclude the party from the right to present his defense to the main fact thus presumed.

In *Schlesinger v. Wisconsin*, 270 U.S. 230 (1926) the Court struck down a Wisconsin statute declaring that every transfer made within six years of the death of the transferor, without valuable consideration, "shall be

construed to have been made in contemplation of death." The Court held that the failure to provide a hearing to enable the affected party to rebut the presumption renders it unconstitutional under the 14th Amendment.

In *Heiner v. Donnan*, 285 U.S. 312 (1932) the Supreme Court ruled unconstitutional an Act of Congress providing that a transfer, without consideration, made within two years of the death of the transferor shall "be deemed and held to have been made in contemplation of death." The failure to provide a hearing to permit an affected party to rebut the presumption rendered the statute fatally defective.

Criminal statutes creating irrebuttable presumptions have also been struck down where there is no opportunity to rebut the presumption. *Tot v. United States*, 319 U.S. 463 (1943) (possession of firearm by convicted felon does not permit inference that firearm was received in interstate commerce); *United States v. Romano*, 382 U.S. 136 (1965) (the presence of an accused at an illegal still does not permit an inference that the accused possessed or was in custody or control of contraband); *Leary v. United States*, 395 U.S. 6 (1965) (it cannot be presumed that person in possession of marijuana knew that it was imported).

In *Bell v. Burson*, 402 U.S. 535 (1971), the Court struck down, as a violation of due process, a Georgia statute that required the suspension of the driver's license and registration of an uninsured motorist involved in an accident unless the motorist posted security in an amount claimed by aggrieved parties. The Court held that due process required that the motorist be afforded a forum to determine whether there was a reasonable possibility that a judgment would be rendered against him. Anything less prejudged the motorist on the issue of fault.

In *Stanley v. Illinois*, 405 U.S. 645 (1972), an Illinois statute provided that upon the death of a mother her children became wards of the state, notwithstanding

the presence of the father who was not married to the decedent. In striking down the statute, the Court held that this amounted to an irrebuttable presumption that an unmarried father was unfit as a parent without providing him a hearing on that issue.

Vlandis v. Kline, 412 U.S. 441 (1973), involved a Connecticut statute that defined a "nonresident" as an unmarried student who resided out of the state for any part of the year immediately preceding his application for admission to the state university system. The Court declared the statute invalid as a denial of due process as applied to students who, in fact, became bona fide Connecticut residents. The irrebuttable presumption of nonresidence provided no opportunity for a student to demonstrate that he was, in fact, a resident.

The Appellants' primary argument in the instant case is that Section 314(c) of the Act does not set up an irrebuttable presumption at all because Congress was not concerned with the "intent" of the mining claim owner. "Instead, it merely provides in effect that failure to file . . . would result in extinguishment of a claim." Appellants' brief, p. 36.

Appellants misconstrue the legislative history of the Act in an attempt to demonstrate that Congress did not intend to create a statutory presumption. Before discussing the legislative history, however, it should be pointed out that the Supreme Court has ruled on numerous occasions that where statutes are "clear and unequivocal on their face, we find no need to resort to the legislative history of the Act." *United States v. Oregon*, 336 U.S. 643, 648 (1961). *See, also, Ernst & Ernst v. Hockfelder*, 425 U.S. 185, 201 (1976):

> [T]he language of the statute controls when sufficiently clear in its context.

See, also, United States Railroad Retirement Board v. Fritz, 449 U.S. 166, 179 (1980), holding that the plain language of a statute controls its interpretation.

The statute at issue herein "clearly and unequivocally" establishes an irrebuttable presumption of abandonment by a claim owner when he fails to file documents:

> The failure to file such instruments as required [herein] shall be deemed conclusively to constitute an abandonment of the mining claim . . . by the owner.

This statute so clearly sets up an irrebuttable presumption as to require no need to delve into the legislative history of the Act. But, even if the legislative history is examined microscopically there is nothing in that history to support the Appellants' position.

The legislative history demonstrates that Congress was seeking to eliminate "long dormant" claims that had accumulated since the enactment of the 1872 mining law. *One-Third of the Nations Land, supra*, p. 130. Congress also desired that miners continue to inform the BLM of their mining activities on a year-to-year basis by providing that a copy of the affidavit of assessment work, which was recorded with the local county recorder, be filed with the BLM.

Appellants suggest throughout their brief that Congress desired to set up a federal "recording" system, *see*, e.g., Appellants' brief pp. 4, 5, 41, n. 28, and that the Act is like a statute of limitations. In fact, Congress intended nothing of the sort. The Senate Report on the Act states:

> This recording requirement is not intended to supersede nor displace the existing recording requirements under State law. As such its purpose is to advise the Federal land managing agency, as proprietor, of the existence of mining claims.
>
> S.Rep. 94-583, 94th Cong., 1st Sess. 65 (1975).

Thus, throughout the statute Congress used the word "file" as opposed to "record" when referring to what a

miner was required to do at the BLM office. 43 U.S.C. 1744(a), (b), (c). Likewise the word "record" is used to refer to what a miner is required to do under state law. 43 U.S.C. 1744(a), (1), (2). This demonstrates not only that Congress simply wanted the BLM "advised of the existence of mining claims," but that Nevada's recording system would be preserved.

Nevada's general real property recording system is a "notice-race" system providing that a bona fide good faith purchaser of real property who first records will defeat an earlier purchaser who did not record his instrument. Nev. Rev. Stat. 111.325. A person in actual possession of real property and who is actively mining that property (like the Lockes) cannot lose his property under Nevada's system even if he does not record his conveyance. This is true because the subsequent purchaser is charged with actual knowledge of the Lockes' ownership and is therefore not a bona fide good faith purchaser. *Moore v. DeBernardi*, 47 Nev. 33, 213 Pac. 1041 (1923).

Likewise, a miner does not forfeit his mining claim if he fails to record his affidavit of annual assessment work pursuant to Nevada law. The effect of recording the affidavit is as follows:

> The affidavit or statement, or a copy thereof, duly certified by the county recorder shall be prima facie evidence of the performance of such labor or the making of such improvements, or both.
>
> Nev. Rev. Stat. 517.230(2).

The only penalty for failure to record the affidavit is that in the event the work is challenged the miner will have the burden of going forward with evidence of performance of the work. In any event he must prove the work was accomplished. 2 Rocky Mountain Mineral Law Foundation, *The American Law of Mining*, 141-142 (1983).

Since the Lockes' claims cannot be forfeited under Nevada's system for failure to record an annual affidavit and since Congress did not intend to "supersede" or "displace" Nevada's system it is illogical to assume that Congress intended that miners should forfeit their claims by filing an affidavit one day late.

The case at bar shows that Congress made a mistake because the statute, if constitutional, would defeat the intention of Congress. But the government cannot rewrite the statute to make it a recording statute when such revision is not supported by the plain meaning of the words chosen by Congress or by the congressional history.

Appellants cite several wholly inconclusive statements of congressional intent to support thier argument that the statute does not mean what it says. For example, at footnote 27, Appellants cite a statement from the House report that "failure to comply . . . constitutes abandonment of the claim," and contend (without a cite of authority) that this "assigns a new definition to the term 'abandonment'." This contention of the Appellants is wholly without support in either the Act or the legislative history. The Act does not itself contain a definition of the word "abandonment;" consequently, it must be presumed that Congress intended to ascribe the ordinary and well recognized meaning to that term:

> Abandonment is a voluntary act on the part of the claimant, and consists of a subjective intent to abandon coupled with an external and objective act by which that intent is carried into effect. Thus, an abandonment may be defined as "a leaving of the claim by the owner with the intention, express or implied, of never returning to it, or, in other words, leaving it open and free to location by any one who chooses to take it." In some decisions, the emphasis is not on the existence of an intent not to return, but rather on the absence of an intent to return. The distinction is probably not important, and in

> either case, the mental state of the claimant will be deemed an intent to abandon. Thus, abandonment may be negated not by showing an absence of any intent whatsoever regarding returning to the claim, but rather by showing the existence of a good faith intent to return.
>
> 2 Rocky Mountain Mineral Law Foundation, *The American Law of Mining* 194 (footnotes omitted).

In footnote 28 Appellants set out three more statements from the record which do not support their argument that the Act does not create an irrebuttable presumption.

It cannot be overemphasized that Congress was concerned with protecting operating mines for the benefit of the nation as a whole. *One-Third of the Nation's Land*, *supra*. *See*, also, statement of Senator McClure:

> We should be trying to preserve to the people the right to the minerals interests for a variety of public policy reasons, and also perhaps for a constitutional reason in regard to the vesting of property rights.
>
> 122 Cong. Rec. 4052 (1976).

The Appellants' arguments that Congress desired to set up a system whereby 5.5 million "long dormant" claims would be initially eliminated and additional claims would be "weeded out" in subsequent years as miners failed, or forgot, to file an affidavit (Appellant's brief n.13) is only partially correct. As the record shows, Congress did in fact intend to eliminate the "long dormant" claims. It did not, however, seek to eliminate active claims on a year to year basis.

The district court found that Congress used the irrebuttable presumption of 43 U.S.C. § 1744(c) to clear the approximately 6,000,000 long dormant claims that had clouded the title to the public domain since 1872. The court recognized that as to these millions of claims there was no practical alternative and but for the presumption

of abandonment the government would have been faced with the "awesome task of searching every local title record" in order to give notice to the purported owners. J.S. 9a. The constitutionality of the irrebuttable presumption on the failure to make the initial filing is not at issue here.

The district court also correctly found that once these long dormant claims had been eliminated and owners of active mines had filed with the BLM in 1979 there was no longer any burden on the government in giving notice. The court noted that once initial filing has occurred the BLM has a file with the miner's name on it.[8]

The district court correctly applied the irrebuttable presumption analysis of *Vlandis v. Kline*, *supra*, wherein it was held that where a statute creates a presumption that is not "universally true" in fact and the government has "reasonable alternative means of making the crucial determination" due process demands a hearing to rebut the presumption. J.S. 5a. *See, also Rogers v. United States*, 575 F.Supp. 4 (D. Mont. 1982)[9]

The presumption of abandonment set up by the Act is not "universally true." Miners may fail to have an affidavit on file for many reasons other than having an intention to abandon their claims. For example, a miner

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[8] Appellants concede that it would be a simple matter to provide notice to a miner prior to invalidating his claim. Appellants' brief, 41. The BLM presently sends a "reminder" notice to every mine owner reminding him of the filing requirements, n. 5, *supra*. In these circumstances it is apparent that there would be little, if any, additional burden on the government to inquire as to whether a late filer actually intended to abandon his claim.

[9] Irrebuttable presumption analysis has been commented upon favorably as a procedural due process approach which "strikes an appropriate balance between judicial deference to the legislature and judicial intervention on behalf of the individual." Note, *Irrebuttable Presumptions as an Alternative to Strict Scrutiny: From Rodriguez to LaFleur*, 42 Geo. L.J. 1173, 1201 (1974).

may die prior to the due date,[10] or the BLM may misplace the miner's affidavit.[11] A miner could become hospitalized or be inducted into the military or simply overlook the filing deadline.

The Lockes continuously operated their claims for more than twenty years and removed more than $4,000,000 in materials from the claims during that period, including more than $1,000,000 during the 1979-80 assessment year when the BLM declared their claims abandoned and void. Therefore, it cannot be said that the presumption of abandonment set up in this statute is "universally true."

As noted, *supra*, there is no burden on the BLM in inquiring of miners, who have a file at the BLM office, as to whether they intend to abandon their claims prior to a declaration of abandonment. In most cases the government accomplishes nothing by declaring valid claims

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[10] In *Estate of Stanley Styles*, 75 IBLA 272 (1983), the miner owned thirty-four pre FLPMA claims which he filed timely with the BLM in 1979. He also recorded his affidavits of labor timely with the Lander County, Nevada, recorder and with the BLM in 1980 and 1981. In 1982 Mr. Styles properly recorded his affidavit of labor with the county but died on December 3, 1982, thereby missing the December 30th deadline for filing the affidavit with the BLM. The representative of the estate was not appointed until March 28, 1983. *In the Matter of the Estate of Stanley Styles*, Case No. 5848, Lander County, Nevada, District Court. The BLM declared Mr. Styles' claims void and abandoned. On appeal the decision was affirmed by the Administrative Judges, ruling that the fact of death was not sufficient to overcome the statutory presumption.

[11] In the case of *Frank J. Tarantino*, 77 IBLA 328 (1983), the miner owned two pre FLPMA claims which he initially timely filed with the BLM in 1979. In 1980, 1981 and 1982 Mr. Tarantino properly recorded his affidavits of labor with the Washoe County, Nevada, recorder and also filed them with the BLM. However, the BLM later could not find his 1982 affidavit and declared the claims void and abandoned. On appeal the IBLA reinstated the claims noting that documents often are "surreptitiously removed" from case files.

abandoned since either the same, or another, locator will relocate the ground if it is valuable and the public domain is not thereby "cleared." Hence, there is no legitimate government purpose to be accomplished and litigation may be fostered between the claim owner and a junior locator. Of course, in a case like the one at bar the claims cannot be relocated and they are permanently restored to the public domain. Here, again, there is no legitimate purpose served since Congress did not intend to interfere with operating mines.

Weinberger v. Salfi, 422 U.S. 749 (1975), does not bar the Appellees' right to a hearing. *Weinberger* dealt with a classification under the Social Security Act which denied benefits to wives and stepchildren where the wife was married to the deceased wage earner less than nine months prior to his death. The Court held that the case involved a "noncontractual claim" to receive social security and therefore "enjoys no constitutionally protected status." 422 U.S. 771-2. This is in sharp contrast to the property interests owned by the Lockes who have developed their mines by their labor and expenditures over two decades. *Wilbur v. United States*, *supra*.

It is also apparent that the Court in *Weinberger* was concerned that there was no reasonable alternative means of determining whether a marriage was entered into solely to obtain benefits or was, indeed, a valid marriage. 422 U.S. 782. The primary witness regarding the marital intent would always be deceased and participants in sham marriages would have an incentive to conceal relevant evidence adverse to their position. A hearing on the question would, therefore, be useless. Ibid. *See*, also, 422 U.S. 782, n.15.

An inquiry as to a miner's intention to abandon his mining claim would be meaningful, on the other hand. The miner could produce his production records, cancelled checks and business records showing expenditures on the ground and could produce geologists, miners and

others who have worked the claims. Such a hearing would be a meaningful fact-finding proceeding. Hence, *Weinberger* is distinguishable from the instant case.

Texaco, Inc. v. Short, 454 U.S. 516 (1982), which is heavily relied upon by Appellants, is also distinguishable from the case at bar. In *Texaco* Indiana passed a "non-use" statute which provided that a severed mineral interest which is not used for at least twenty years reverts to the owner of the estate from which it was carved unless the owner of the mineral interest records a "statement of claim." The issue was whether actual notice should have been given to the owners of mineral interests that the statute had been enacted and whether the conditions stated in the statute for retaining a mineral interest were a reasonable exercise of the State's power to regulate the use of property within its borders.

The Court, in *Texaco*, held, first, that actual notice of the passage of the statute was not required and, second, that the conditions set up by the statute for retention of a mineral interest were reasonable and, therefore, met due process standards. The Court noted that before there could be a lapse of a mineral interest there must be total nonuse for twenty years. "Use" consisted of any production or work on the property, any rents or royalties being paid by the holder of the mineral estate or any taxes paid during the twenty year period. It was noted that the State had legitimate goals in insuring that property within its borders was put to use and that mineral interests are developed. The State also had a fiscal interest in collection of property taxes.

The case at bar is distinguishable from *Texaco* on the points considered controlling in that case:

> First, the Lockes have been actively operating their claims and have been paying income taxes to the federal government and property and production taxes to the State of Nevada for more than twenty years. Nev. Rev. Stat. 362.100, *et seq.*

> Second, the Appellants in the case at bar have no legitimate interest whatsoever in having active mining claims declared abandoned. No legitimate interest is furthered by such a result. Indeed, as we have shown, *supra*, the government's interest in preserving active mines is defeated by such a result.

In *Texaco* it was emphasized that Indiana had not exercised its power to control land use in an "arbitrary" manner. In the case at bar declaring active claims abandoned because an affidavit is not timely filed is in fact "arbitrary" where there is no legitimate goal to fulfill.[12] It should also be noted that the protections of the Indiana statute for compliance by any use or activity within twenty years emphasizes the fact that there must be actual intention to abandon a mineral interest. This is in sharp contrast to FLPMA which gives no consideration to actual use.

Appellants contend that there is a legitimate governmental interest in "weeding out" claims that become "stale" on an annual basis and that the automatic elimination of claims for which an annual affidavit is not filed accomplishes this purpose. Even if such "weeding out" could be classified as legitimate the statute wholly fails to accomplish that purpose.

It is readily apparent that the statute does not "weed out" only stale claims but, rather, "weeds out" all claims for which an affidavit is not filed including active claims. It is also apparent that truly "stale" claims (i.e., where there is no legal discovery or where they are located by persons for hunting, fishing or other non-mineral purposes) are not affected at all by the statute. So long as an affidavit is filed every year the claim is carried by the BLM as an active claim regardless of its legiti-

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[12] Although there may have been a legitimate governmental interest in eliminating "long dormant" claims, once the initial filings occurred, or failed to occur, in 1979 the Congressional goal was fully realized.

many. If the government seeks to eliminate such a claim it would be necessary to contest the claim for lack of a discovery. Such a contest requires notice and an opportunity to be heard. *Cameron v. United States*, 252 U.S. 450, 460 (1920).

In the final analysis it is clear that the instant case is distinguishable from *Vernon* in every important respect and that that case has no application here.

As discussed, *supra*, the Supreme Court has employed irrebuttable presumption analysis for many years and such analysis reaches a just and proper result in the instant case. However, even if one were to accept Appellants' argument that the Act does not set up an irrebuttable presumption the result is the same and the Court should conclude that the Lockes have been denied due process.

C. Lockes Would Also Prevail Under *Morrissey v. Brewer*

In *Morrissey v. Brewer*, 408 U.S. 471, 481-82 (1972), the Court, in discussing the process which was due to a parole violator, indicating that "due process" is a "flexible" concept to be applied in such a manner as to consider the extent to which an individual might suffer grievous loss, the nature of the governmental interest involved and procedural safeguards might be employed, in addition to those actually employed.

In *Mathews v. Eldridge*, 424 U.S. 319, 334-5 (1976), involving the termination of an individual's social security disability benefits, the Court stated:

> [O]ur prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

In *Mathews* the Court determined that the procedure employed by the Social Security Administration afforded the individual due process since prior to termination of benefits the Administration conducted an investigation wherein the recipient of benefits was sent a questionnaire regarding his disability. The recipient then submitted medical and other evidence to the agency. Upon independently obtaining medical information from the recipient's sources if there was any conflict the agency could have an examination made by an independent physician. If benefits were then tentatively terminated the claimant could supply additional evidence if he desired. When the Agency made a final determination as to eligibility for benefits the decision was reviewed and the claimant was notified by the SSA Bureau of Disability Insurance that he had the right to a *de novo* reconsideration of the decision. The claimant could then submit the same or additional evidence of disability and have his case reconsidered. Upon an adverse ruling the recipient had the right to an administrative evidentiary hearing and finally to obtain judicial review.

The issue in *Mathews* was whether, notwithstanding the submission of evidence and other investigations prior to termination of benefits, the recipient was entitled to an evidentiary hearing prior to termination. The procedures in *Mathews* are instructive when compared with what occurred in the instant case. Here, the Lockes were barred from presenting any evidence regarding their non-abandonment of their property. Although they filed their affidavits of assessment work on December 31, 1980, which showed that they did not intend to abandon their claims this was ignored when the BLM wrote its decision on April 4, 1981, declaring the claims abandoned.

In *Mathews* a primary consideration was the fairness of the pre-termination procedures. In the instant case pre-termination procedures are non-existent. The *Lockes'* property interests were declared void and abandoned by the BLM without requesting any evidence at all from them.

The private interest that is affected by the government's action here is significant. Indeed, the Lockes earn their livelihood for themselves and their families from the operation of these claims.

Additional procedural safeguards could easily be employed to protect the interests of the Lockes and others similarly situated. The government already has the system computerized and sends notices to every miner every year reminding them of the filing requirements. In the event a miner does not file an affidavit timely the same computer could send him a notice advising him to submit some evidence as to whether he had abandoned his claim. In *Mathews* a questionnaire was sent. A short questionnaire might also be employed here.

The "hearing" employed need not be elaborated. Due process does not require an initial "evidentiary" hearing. *Mathews*. Most cases would be disposed of by the miner's submission of his affidavit of assessment work.

There is no significant governmental interest that will be impaired by providing the Lockes with a due process hearing prior to terminating their claims. The government's primary interest was in the elimination of millions of "long dormant" claims. Those claims were eliminated in 1979. The government's interest in keeping land managers informed of the status of mining claims on public lands will not be impaired by providing a pre-forfeiture procedure. If a notice is sent to a miner inquiring as to whether he intended to abandon his claim and the miner replies affirmatively the land manager can indicate on his records that the claim has been abandoned. If the

miner submits his affidavit or other evidence of non-abandonment the land manager can indicate in his records that the claim is active.

The only thing that would be taken away from the government by this procedure is its present ability to instantly declare operating mines abandoned upon the failure to receive an affidavit on or before December 30 each year.

As compared to the grievous loss to the Lockes in this case, any burden on the government in setting up some form of procedural safeguard is insignificant.

D. The Statute Should Be Construed to Avoid a Forfeiture

Subsection (a) of the Act provides that the claim owner shall file an affidavit of assessment work each year. That subsection also provides that the filing shall be made "prior to December 31."

Subsection (c) of the Act then sets up penalties for non-compliance in the following language:

> The failure to file *such instruments* as required by subsection (a) . . . shall be deemed conclusively to constitute an abandonment *of* the mining claim . . . by the owner. (emphasis supplied)

The forfeiture provision does not state that the failure to file *at the time* required by subsection (a) shall result in abandonment. Rather, the forfeiture occurs as the result of failure to file "such instruments" required by subsection (a). There is a question in regard to the words "as required" in the subsection. Do those words modify the sentence so that it means, in effect: "The failure to file such instruments [described] by subsection (a) . . . ," or so that it means: "The failure to file such instruments [described and at the time stated] by subsection (a) . . . . ?"

It would appear that the first interpretation is the better one since Congress used the word "timely" in the second part of the subsection:

> . . . but it shall not be considered a failure to file if the instrument is . . . not *timely* filed for record under other Federal laws permitting filing or recording thereof.
>
> Act, subsection (e) (emphasis supplied).

Thus, it does not seem logical that Congress would use the word "timely" in the second part of subsection (e) but not in the first part if it desired to have mining claims forfeited if an affidavit was not "timely" filed. If timeliness was important Congress could have easily provided:

> The failure to [timely] file such instruments as required by subsection (a) . . . shall be deemed conclusively to constitute an abandonment. . . .

Penal statutes providing for penalties and forfeitures are strictly construed:

> . . . penal statutes should be strictly construed against the government or parties seeking to exact statutory penalties and in favor of persons on whom such penalties are sought to be imposed.
>
> 3 Sands, *Statutes and Statutory Construction*, § 15.03, 6-7 (4th Ed., 1974).

As we have shown, *supra*, the intent of Congress in enacting FLPMA was to preserve operating mines. In view of the ambiguity of the forfeiture provision this Court should strictly construe the statute so as to preclude a forfeiture of the Lockes' mining claims.

E. The Lockes Have Substantially Complied With The Act

As an independent ground for granting the Lockes' motion for summary judgment the district court held

that the Lockes substantially complied with the Act. As discussed, *supra*, the Lockes complied in every way with the statute except file their affidavits on or before December 30, 1980.

The district court noted that there has been considerable litigation regarding the General Mining Law assessment provision, 30 U.S.C. § 28. Since FLPMA deals with assessment work requirements and the filing of assessment work affidavits, cases litigated under those provisions provided a meaningful indication as to how FLPMA should be interpreted.

Hickel v. Shell Oil Co., 400 U.S. 48 (1970); *Wilbur v. United States*, 280 U.S. 306 (1930) and *Ickes v. Virginia-Colorado Development Corp.*, 295 U.S. 639 (1935), indicated that miners' "possessory titles" should not be disturbed on "flimsy or insubstantial grounds."

The Lockes have complied with every directive of FLPMA but one. They filed their documents in 1979; they worked their claims continuously since passage of FLPMA; they recorded their affidavits of assessment work with the county recorder, as directed by FLPMA. In 1980 they filed with the BLM one day late.

The government recognizes that substantial compliance is sufficient for performance of annual assessment work by enacting a regulation to that effect after *Hickel*, *supra*, 43 C.F.R. § 3851.3. In addition the BLM presently permits substantial compliance with FLPMA by permitting affidavits to be filed by January 19 if they are postmarked by December 30. Appellants' brief, p. 6. In light of *Hickel* the district court properly held that the Lockes had substantially complied by filing one day late.

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted,

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APPENDIX

Section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1744, provides:

RECORDATION OF MINING CLAIMS

(a) *Filing requirements*

The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976 and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. The owner of an unpatented lode or placer mining claim located after October 21, 1976 shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection.

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, or (*sic*) a detailed report provided by section 28-1 of title 30, relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

(b) Additional filing requirements

The owner of an unpatented lode or placer mining claim or mill or tunnel site located prior to October

21, 1976 shall, within the three-year period following October 21, 1976, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground. The owner of an unpatented lode or placer mining claim or mill or tunnel site located after October 21, 1976 shall, within ninety days after the date of location of such claim, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground.

(c) Failure to file as constituting abandonment; defective or untimely filing

The failure to file such instruments as required by subsections (a) and (b) of this section shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner; but it shall not be considered a failure to file if the instrument is defective or not timely filed for record under the other Federal laws permitting filing or recording thereof, or if the instrument is filed for record by or on behalf of some but not all of the owners of the mining claim or mill or tunnel site.

(d) Validity of claims, waiver of assessment, etc., as unaffected

Such recordation or application by itself shall not render valid any claim which would not be otherwise valid under applicable law. Nothing in this section shall be construed as a waiver of the assessment and other requirements of such law.

AMICUS CURIAE

BRIEF

Office Supreme Court, U.S.
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No. 83-1394

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

UNITED STATES OF AMERICA, *et al.*, *Appellants*,

v.

MADISON D. LOCKE, *et al.*, *Appellees*.

On Appeal From the United States District Court for the District of Nevada

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BRIEF OF AMICUS CURIAE STATE OF NEVADA IN SUPPORT OF APPELLEE MADISON D. LOCKE, *et al.*

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APPELLANTS

v.

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TABLE OF CONTENTS

	Page
Interest of Amicus Curiae.....	1
Questions Presented.....	6
Summary of Argument.....	7
Argument.....	8
I. APPELLEES SUBSTANTIALLY COMPLIED WITH THE REQUIREMENTS OF § 314(a) BY FILING A NOTICE OF ANNUAL ASSESSMENT WORK ON DECEMBER 31, 1980.....	8
II. THE PROVISIONS OF §§ 314(a) AND 314(c) VIOLATE THE PROCEDURAL DUE PROCESS PROTECTIONS OF THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION INSOFAR AS THEY CREATE AN IRREBUTTABLE PRESUMPTION OF ABANDONMENT FOR FAILURE TO TIMELY FILE THE ANNUAL ASSESSMENT NOTICE.....	21
Conclusion.....	29

TABLE OF AUTHORITIES

Cases:	Page
Best v. Humboldt Placer Mining Co., 371 U.S. 334, 335 (1963)..	22
Board of Regents v. Roth, 408 U.S. 564 (1972).....	21
Cameron v. United States, 252 U.S. 450, 460 (1920).....	23
Hickel v. Shale Oil Corp. 400 U.S. 48, 57 (1970).....	16
Holy Trinity Church v. United States, 143 U.S. 457, 455 (1892)	15
Ickes v. Virginia-Colorado Development Corp. 295 U.S. 639 (1935).....	16
In re Manse Spring and its Tributaries, 60 Nev. 280. 286-287, 289, 290, 108 P.2d 311 (1940).....	15
Locke v. United States, 573 F.Supp. 472 (D.Nev. 1983).1, 13, 15	
Mallet v. Uncle Sam Gold and Silver Mining Co., 1 Nev. 188 (1865).....	15
Morrissey v. Brewer, 408 U.S. 471, 481-82 (1972).....	23
Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306 (1950).....	27
Murray v. Osborne, 33 Nev. 267, 111 Pac. 31 (1910).....	17

Cases - Continued — Page

NL Industries v. Clark, CIV-LV-82-176 BDF, (D. Nev. Mar. 13, 1984).....18, 19

Oreamuno v. Uncle Sam Gold and Silver Mining Co., 1 Nev. 215 (1865).....15, 17

Oregon Portland Cement Co. v. U. S. Department of the Interior, A83-510 CIV, (D. AKA, April 24, 1984)..... 19

Peter Pan Fabrics, Inc. v. Martin Wiener Corp., 274 F.2d 487, 489, 2nd Cir. (1960)..... 15

Rogers v. United States, 575 F.Supp. 4 on rehearing No. CV-80-114-H (D.Mont. 1983).....26, 27

United States v. New Mexico, 438 U.S. 696, 699 N. 3 (1978); ftn. 4

Vlandis v. Kline, 412 U.S. 441, 452 (1973)..... 24, 26

Watt v. Western Nuclear, Inc., No. 81-1686, June 6, 1983..... 18

Western Mining Council v. Watt, 643 F.2d 618. Cert Denied 454 U.S..... 22

Wilbur v. United States, ex rel. Krushnic, 280 U.S. 306, 317 (1930).....16, 22

Constitution, statutes, regulations and rule:

Federal Land Policy and Management Act of 1976..... 2

Constitution, statutes, regulations and rule - Continued — Page

43 U.S.C., § 1701..... 2

§314....3, 4, 6, 7, 8, 15, 16, 18, 19

§314(a)..2, 3, 5, 7, 8, 9, 11, 12, 19 .....20, 21, 25, 27

§314(b).....8, 18

§314(c)2, 5, 7, 18, 19, 21, 23 27, 28

General Mining Act of 1872 22

30 U.S.C. 22 et seq..... 22

30 U.S.C. 28..... 16

30 U.S.C. 611, et seq..... 13

43 C.F.R. 3833.0-5(m)..... 12

43 C.F.R. § 3833.2-1 (1982).....9, 16

43 C.F.R. 3851.3..... 16

Miscellaneous:

American Law of Mining, § 8.2 196..... 19

Elliott, History of Nevada, pp. 341-34)..... 4

Interior Board of Land Appeals, 65 I.B.L.A. 122 (1982)..... 2

Minerals-Foundations of Society League of Women Voters, 1984.. 4

Nevada Mineral Industry 1981, Nevada Bureau of Mines and Geology, publication MI 1981, page 9..... 5

Miscellaneous - Continued Page

Public Land Law Review Commission, One Third of the Nation's Land: A Report to the President and to the Congress (1970)..... 10

S.Rep. 94-583, 94th Cong. 1st Session (1975)..... 9

Sherwood, Mining Claim Recordation and Prospecting Under the Federal Land Policy and Management Act of 1976, 23 Rocky Mtn. Min. L. Inst. 1 (1977)..... 19

2 The American Law of Mining, § 8.1A, p. 194..... 14

Trelease, et al., Cases and Materials on Natural Resources, 415-417 (1965)..... 22

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

No. 83-1394
UNITED STATES OF AMERICA, ET. AL.,
APPELLANTS
v.
MADISON D. LOCKE, ET AL.
Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

BRIEF OF AMICUS CURIAE

STATE OF NEVADA

IN SUPPORT OF APPELLEES MADISON LOCKE, ET AL.

Interest of Amicus Curiae

The State of Nevada, upon resolution by the Commission on Mineral Resources, respectfully submits this brief as amicus curiae, in support of the decision of the District Court below, in Locke v. United States, 573 F.Supp. 472 (D.Nev. 1983).

This is an action arising from a declaration that ten ungatented mining

claims held by Madison Locke, et al. (hereinafter referred to as the Lockes) were "abandoned and void" by the Bureau of Land Management (hereinafter referred to as BLM), for failure to timely file a notice of annual assessment "prior to December 31" or "on or before December 30" of 1980. The government's declaration was predicated upon its interpretation of § 314(a)and(c) of the Federal Land Policy Management Act of 1976 (hereinafter referred to as FLPMA, 43 U.S.C., § 1701 et seq.). The Lockes had actively engaged in mining on these claims located in White Pine County, Nevada, since 1960, and as a consequence of filing the assessment notices one day late, on December 31, 1980, their claims were declared to be abandoned and void. That decision was affirmed by the Interior Board of Land Appeals, 65 I.B.L.A. 122 (1982).

The District Court reversed the I.B.L.A. Decision and granted the Lockes' Motion for Summary Judgment on two grounds. The Court held that § 314(a) of FLPMA is an unconstitutional violation of procedural due process, insofar as it created an irrebuttable presumption of abandonment for failure to timely file the annual assessment notices. The Court held as the second ground that the Lockes had substantially complied with the provisions of § 314(a).

The BLM Declaration that the Lockes' claims were abandoned was an unduly rigid, technical and harsh result, which is contrary to the legislative history of § 314 and which causes great concern to holders of unpatented mining claims located on public lands in the State of Nevada. The impact of this decision affects the rural economy and tax base of the state.

The mining industry in Nevada is affected by the construction and interpretation placed on § 314 of the Federal Land Policy Management Act of 1976. Miners with claims on federal lands stand in an uneasy relationship with the federal government. In excess of Eighty-six and one-half (86½%) percent of the lands within the boundaries of the State of Nevada are owned by the federal government. United States v. New Mexico, 438 U.S. 696, 699 N. 3 (1978); ftn. The lands of the state are heavily mineralized. Minerals-Foundations of Society, League of Women Voters, 1984. The history of Nevada reflects that the economy of this state has been largely dependent on the minerals industry. Elliott, History of Nevada, pp. 341-343. Because of these unique geologic and political conditions, mining claims are filed on federal lands and federal land managers affect the future of the

state. The forfeiture of the Lockes' claims and lack of flexibility in the interpretation of § 314(a)and(c) by the BLM in this case introduces a large measure of insecurity into the rights of holders of mining claims on federal land.

Mines in Nevada ranked first in the nation in the production of mercury, magnesite, gold and barite, second in the nation in the production of diatomite, gemstones, lithium, and third in the nation in production of silver and fluorspar. In order of ranking, Nevada is the fifteenth among the states in non-fuel mineral production. Nevada Mineral Industry 1983, Nevada Bureau of Mines and Geology, publication MI 1983, page 9.

QUESTIONS PRESENTED

1. The District Court properly found that the Appellees satisfied the requirements of Section 314 by filing the Assessment Notices for their mining claims on December 31, 1980.

2. A mining claim is a protected interest that may only be taken following notice and the opportunity for a fair hearing.

SUMMARY OF ARGUMENT

Section 314 of FLPMA was enacted to clear the public lands of long dormant mining claims. The Congressional intent is not served by the declaration that the Lockes' 10 active, productive unpatented mining claims were abandoned for filing an annual assessment notice with BLM one day late. The Lockes substantially complied with the requirements of Section 314(a).

A mining claim is a protected property interest that entitles the holder to the procedural protections of the Fifth Amendment. Section 314(c) creates an irrebuttable presumption of "abandonment" that is not universally true in fact and which is susceptible to notice and adequate hearing provisions.

ARGUMENT

I. APPELLEES SUBSTANTIALLY COMPLIED WITH THE REQUIREMENTS OF § 314(a) BY FILING A NOTICE OF ANNUAL ASSESSMENT WORK ON DECEMBER 31, 1980.

The District Court properly found substantial compliance with § 314(a) and reversed the harsh, hypertechnical interpretation taken by BLM that the Lockes' mining claims were abandoned and void because the assessment notice was filed one day late. In its declaration, the BLM had extinguished active mining claims. The action of the BLM was unreasonable and arbitrary in light of the legislative history of § 314 to rid the public lands of long dormant mining claims. The unreasonableness of the BLM's position is apparent after a review of the statute, the legislative history and of the administrative record below.

The provisions of § 314(b) require that holders of unpatented mining claims

on the public lands which were located prior to October 21, 1976, file a copy of the official record of the notice of location before October 21, 1979. The provisions of § 314(a) require that "prior to December 31" of each year thereafter, the holder of unpatented mining claims file a notice of annual assessment or notice of an intent to hold the claim. A regulation adopted by the Department of the Interior, 43 C.F.R. 3833.2-1(b)(1) pursuant to the above section, requires that the claim be filed "on or before December 30" of each year following the initial filing. The legislative history of § 314(a) indicates that it was enacted to clear the public lands of long dormant claims and to provide federal land managers with notice of active mining claims on the public lands. S.Rep. 94-583, 94th Cong. 1st Session (1975). The statute was in part predicated on the

report of the Public Land Law Review Commission, One Third of the Nation's Land: A Report to the President and to the Congress (1970). That report advances, on page 130, the recommendation that:

> Congress should establish a fair notice procedure a) to clear the public land of long dormant mining claims and, b) to provide the holders of existing mining claims an option to perfect their claims under the revised location provisions we recommend.

The report stated that under such a procedure, failure to file proper notice of preexisting claims with county and federal agencies within a reasonable time would constitute conclusive evidence of abandonment. The report continued that this would be somewhat analogous to quiet title actions and to the surface rights proceedings authorized by the Surface Use Act of 1955. Clearing the record of an estimated 5.5 million long dormant claims

would assist in achieving more efficient land planning and management by federal agencies.

Viewing the BLM Organic Act, FLPMA as a whole, it is apparent that the annual notice was intended to be just that, notice, and not to serve as grounds for an annual purge of claims for mistake of judgment caused by misunderstanding of the terms of the statute and the regulations. The Commission stated, on page 121, that: "Public land mineral policy should encourage exploration, development and production of minerals on the public lands." The lack of flexibility in the BLM's interpretation of § 314(a) in this case cost the State of Nevada a valuable economic enterprise in contradiction to the "overriding national policy that encourages and supports the discovery and development of domestic sources of supply". id. at 121.

Initially, the BLM required annual assessment notices to be filed on "or before" December 30. The BLM presently allows, by regulation, an assessment notice, which is postmarked prior to December 30, to be filed so long as it is received prior to January 19th of the ensuing year. 43 C.F.R. 3833.0-5(m). This regulation was adopted in 1982. With the later regulation, Appellants have relaxed the strict construction placed on the statute and introduced a measure of "substantial compliance" into this statutory interpretation.

The record is clear that the Appellees filed the appropriate notice required under § 314(a) in 1979, thereby giving notice to the Bureau of Land Management that their claims were active and that they intended to continue their mining operation. This filing was notice that the claims were not abandoned and

satisfied the major purposes of FLPMA. The Lockes' daughter, Laura C. Locke, learned from an unidentified BLM employee in Ely, Nevada, that the notices must be filed on December 31. The Lockes thereafter hand delivered the annual assessment notices from the mine in White Pine County, over 300 miles distant, to the state office of the Bureau of Land Management in Reno on December 31, 1980. 573 F.Supp. 472 at 474. Through a mistake, inadvertence or error, the Lockes did not file the assessment notices "prior to" December 31, 1980. The claims, declared void, could not be relocated due to the provisions of 30 U.S.C. 611, et seq.

The record reflects that the annual assessment work on these mining claims had in fact been completed during the 1980 calendar year and that assessment notices had been filed in the county recorder's

office. The record reflects that the Lockes had a substantial investment in the mining operation, and were actively engaged in the sale of gravel and building materials produced on this claim. The record reflects that the Lockes complied with all state requirements for maintenance of a mining claim in the State of Nevada. The foregoing is included to show that there was, in fact, no "abandonment" of these claims.

Abandonment has been defined as a "voluntary act on the part of the claimant, and consists of a subjective intent to abandon coupled with an external and objective act by which that intent is carried into effect." 2 American Law of Mining, § 8.1A, p. 194. The legal conclusion of "abandonment" requires a concurrence of act and intent which may be the basis of a finding that a mining claim has been abandoned. The law of abandonment in

Nevada requires a clear expression of intent to abandon the claim, the relinquishment of a known right, and involves a mixed question of law and fact. Mallet v. Uncle Sam Gold and Silver Mining Co., 1 Nev. 188 (1865), Oreamuno v. Uncle Sam Gold and Silver Mining Co., 1 Nev. 215 (1865). In re Manse Spring and its Tributaries, 60 Nev. 280, 286-287, 289, 290, 108 P.2d 311 (1940).

The District Court found that the Lockes were in substantial compliance with the provisions of § 314 of the FLPMA. 573 F.Supp. 472 at 479. The Court found that a literal interpretation of the words of the statute was not within the spirit or the intention of Congress. Peter Pan Fabrics, Inc. v. Martin Wiener Corp., 274 F.2d 487, 489, 2d Cir. (1960), Holy Trinity Church v. United States, 143 U.S. 457, 459 (1892).

The Court found that § 314 was a federal recording requirement which was added to the existing general mining law of 1872 which required local recordation of assessment notices. The same documents are filed with both the County Recorder's office and with the Bureau of Land Management. 43 C.F.R. § 3833.2-1 (1982). The recording requirement of the mining law of 1872, 30 U.S.C. 28, has been interpreted to be satisfied by "substantial compliance" with the assessment notice requirement "since the possessory title of the claimant granted by 30 U.S.C. § 26 may not be disturbed on flimsy or unsubstantial grounds." Hickel v. Shale Oil Corp. 400 U.S. 48, 57 (1970). Wilbur v. Krushnic, 280 U.S. 306 (1930) and Ickes v. Virginia-Colorado Development Corp. 295 U.S. 639 (1935). 43 C.F.R. 3851.3 provides that substantial compliance with the statute pertaining to

assessment work is sufficient for the purposes of the Surface Mining Act.

The concepts of substantial compliance and fair construction of the mining laws have been a part of the mining law since the early days of mining in the west. See Oreamuno v. Uncle Sam Gold and Silver Co.., supra. Forfeitures of mining claims are not favored and strict construction ought not be placed upon mining statutes where the parties have proceeded in good faith and have apparently done all that is required by a fair construction of the statute. Murray v. Osborne, 33 Nev. 267, 111 Pac. 31 (1910).

As amicus curiae, the State of Nevada respectfully requests that this Court affirm the decision of the District Court and accept a degree of flexibility with the provisions of FLPMA. Ninety (90%) percent of the public lands lie in the western states. Public Land Review

Commission, One-Third of the Nations (Ind. p. 121). The significance of this case reaches far beyond the boundaries of the mining claims at issue. The use of the public lands by miners is a western issue since the economies of the western states depend upon mining. See Watt v. Western Nuclear, Inc. No. 81-1686, June 6, 1983, (Stevens Dissent) The enactment of FLPMA caused great uncertainty among miners directly affected by its provisions. The hypertechnical interpretation of the Bureau, which led to the cancellation of the Lockes' mining claims and damaged their livelihood, confirms a feared lack of flexibility in the administration of the federal lands.

FLPMA § 314 is a forfeiture statute. Other District Courts, reviewing the provisions of § 314(b)and(c) have construed the statute strictly against forfeiture. NL Industries v. Clark,

CIV-LV-82-176 RDF, (D. Nev. Mar 13, 1984), Oregon Portland Cement Co. v. U.S. Department of the Interior, A83-510 CIV, (D. AKA, April 24, 1984).

The provisions of § 314(a)and(c) have been criticized as promoting confusion. American Law of Mining, § 8.2, 196. The state requests that the Court be mindful that 1980 was the first year that annual filings were required, and that there was some doubt as to the correct date of filing. The inartful drafting of § 314 has been attacked because of the "unfortunate" use of the words "prior to December 31," where Congress plainly intended the filing requirement to expire with the end of the year. Sherwood, Mining Claim Recordation and Prospecting Under the Federal Land Policy and Management Act of 1976. 23 Rocky Mtn. Min. Law Inst. 1 (1977).

In this case, the Lockes have lost twenty years of work and all future production because of an arbitrary reliance by the federal government on the literal words of § 314(a). The District Court correctly pointed out that the purpose of § 314(a) was to provide a record of active claims for federal land managers, not a continuous trap for the unwary whereby all work of a miner could be undone by a day's error in judgment in reading a statute. The Lockes acted in good faith to comply with the provisions of the Act. The required assessment notices were filed one day late and, as a consequence, governmental action wiped out the Lockes' claims. The interests of the state, its mining industry and individual claimants would best be served by the interpretation that finds filing on December 31 substantial compliance with § 314(a) of FLPMA. For the foregoing

reasons, the decision of the District Court must be affirmed.

II.

THE PROVISIONS OF § 314(a) and § 314(c) VIOLATE THE PROCEDURAL DUE PROCESS PROTECTIONS OF THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION, INSOFAR AS THEY CREATE AN IRREBUTTABLE PRESUMPTION OF ABANDONMENT FOR FAILURE TO TIMELY FILE THE ANNUAL ASSESSMENT NOTICES.

A mining claim, filed on public lands, which contain a discovery of a valuable mineral, is a valuable property right. It is a protected interest under the constitution. See e.g., Board of Regents v. Roth, 408 U.S. 564 (1972). As such, it enjoys the procedural protections of the Fifth Amendment. The rights of a holder of a mining claim are created by law, and are a cornerstone of the nation's economy in that they provide for the efficient extraction of minerals used in

the national economy and the national defense. The holder of a mining claim has the right to transfer the interest in the claim by conveyance, bequest, or by lease. The holder may extract minerals and erect improvements on the claim. Wilbur v. United States ex rel., Krushnic, 280 U.S. 306, 317 (1930) Best v. Humboldt Placer Mining Co., 371 U.S. 334, 335 (1963). Western Mining Council v. Watt, 643 F.2d 618. Cert. Denied 454 U.S. 1031. These rights and the history of mining law in the Western United States are traced directly to the rules established by miners in western mining districts which were later embodied in the General Mining Act of 1872, 30 U.S.C. 22 et seq. Trelease, et al., Cases and Materials on Natural Resources, 415-417 (1965).

The mining claims located and worked by Appellees, the Lockes, et al., on the public lands were taken by the Bureau of

Land Management without adequate notice and an adequate hearing in violation of the due process protections of the fifth amendment to the United States Constitution. The action of the government, in this case, did not provide for an adequate pre-forfeiture hearing during which the Appellees could have appeared and defended their compliance with the provisions of the Mining Law of 1872 pertaining to the filing of annual assessments and as to the lack of actual abandonment of these claims. Cameron v. United States, 252 U.S. 450, 460 (1920). Morrissey v. Brewer, 408 U.S. 471, 481-82 (1972).

Be that as it may, the District Court below found that the operation of § 314(c) created an impermissible irrebuttable presumption that the claims were abandoned because of the late filing of the annual assessment notice with the BLM. The court held this to be a violation of the

procedural due process protection of the Fifth Amendment. Vlandis v. Kline, 412 U.S. 441, 452 (1973).

The Court held that the first element of the irrebuttable presumption analysis was met when it found that the presumption was not necessarily or universally true in fact because of the actual mining operations conducted on the claims of the Lockes, because of the value of the minerals sold from the claims, because of the compliance with state statutes pertaining to the retention of mining claims, and because of the effort made by the Lockes to file the assessment notices in the Reno offices of the Bureau of Land Management on December 31, 1980.

The District Court held that the government had the ability to determine whether the fact presumed, e.g., abandonment, actually existed. The BLM has a "reasonable alternative means" of making

the determination whether the Lockes had, in fact, abandoned their claims. The actual practice of the government in this case rebuts the objection that it lacks sufficient manpower and resources to adequately determine whether a claim has in fact been abandoned and must therefore rely on the operation of the presumption. Since the Lockes complied with the 1979 filing requirement, the government was on notice of the existence of the Lockes' claims and of the data necessary to make a formal entry into the government's data base and records systems for land management purposes. The government in this case had sufficient data sources after the 1979 filing to determine that notice had not been timely filed, and to give the Lockes actual notice of the determination that the claims had been abandoned pursuant to the provisions of the presumption set forth in § 314(a). The hearing

required would focus only on whether the annual assessment work had been completed and recorded with the appropriate county officials, and whether the claim had in fact been abandoned. This type of hearing is required prior to a declaration of abandonment of a property right with the legal and economic elements of a mining claim.

As a consequence of the operation of the presumption of abandonment, the Lockes were unable to obtain an adequate hearing which would allow them to rebut the presumption of abandonment. This is a clear violation of the due process clause of the Fifth Amendment, based on the irrebuttable presumption analysis set forth in Vlandis v. Klein, supra.

The initial filing requirement of § 314(b) was held to be unconstitutional in Rogers v. United States, 575 F.Supp. 4 on rehearing No. CV-80-114-H (D.Mont. 1983)

10-11. The Court in Rogers, supra, declared § 314(c) unconstitutional following the declaration of invalidity by the Bureau of Land Management of claims where the holders had failed to record notices of location as required by § 314(a). The Court in Rogers, supra, applied an irrebuttable presumption analysis similar to that employed by the District Court in this case. That case was not appealed.

The conclusive presumption of abandonment permitted by FLPMA in § 314(c) is a major change in the United States land law. Valuable property rights have been extinguished without notice or a hearing. The standard set forth in Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306 (1950), for notice reasonably calculated under the circumstances to apprise interested parties, and which affords them an opportunity to present their objections, should be required. The

Due Process Clause of the Fifth Amendment requires that notice and an adequate opportunity to be heard must be afforded before property rights are taken by government action. The provisions of § 314(c) provide inadequate notice to claimants.

The conclusive presumption of § 314(c) is an unconstitutional violation of the Fifth Amendment of the United States Constitution for the reason that it creates an irrebuttable presumption of abandonment which is not true in all cases and which is susceptible to adequate notice and hearing provisions.

CONCLUSION

For the foregoing reasons, the State of Nevada respectfully submits this Brief in support of Appellees, Madison Locke, et al.

DATED this 16th day of August, 1984.

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AMICUS CURIAE

BRIEF

No. 83-1394

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IN THE SUPREME COURT OF
THE UNITED STATES

OCTOBER TERM, 1984

UNITED STATES OF AMERICA,
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v.
MADISON D. LOCKE, ET AL., APPELLEES

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT OF THE
DISTRICT OF NEVADA

BRIEF OF AMICUS CURIAE MOBIL OIL CORPORATION IN SUPPORT OF APPELLEES

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TABLE OF CONTENTS

	Page
INTEREST OF MOBIL AS AMICUS CURIAE	2
SUMMARY OF ARGUMENT	5
ARGUMENT	
THE FIFTH AMENDMENT PRECLUDES TERMINATION OF A PRODUCING UNPATENTED MINING CLAIM LOCATED PRIOR TO 1976 FOR FAILURE TO MAKE FILINGS UNDER SECTION 314 OF FLPMA	8
A. A Producing Mining Claim Is a Property Right Entitled to Protection Under the Due Process Clause	10
1. Location of an unpatented mining claim under the General Mining Law of 1872 creates rights which cannot be dispossessed without due process of law	10
2. The Due Process Clause, rather than the Property Clause controls the manner in which the Government may deal with an unabandoned pre-FLPMA mining claim	14

Page

3. The owner of an unpatented mining claim may not be deprived of his property interest without meaningful consideration of the facts pertaining to his use of the claim..... 17

B. In Order To Preserve It as Constitutional, Section 314(c) of FLPMA Should Be Limited So That Loss for Failure to File Occurs Only with Mining Claims Abandoned In Fact..... 21

1. "Abandonment" is a term with a well-known, technical meaning which Congress must be deemed to have used deliberately.... 23

2. The saving interpretation accomplishes the purposes of Section 314..... 27

3. The saving interpretation will not impair the Government's management of the public lands..... 34

Page

4. The saving interpretation of Section 314 is compelled by Texaco v. Short..... 37

5. The saving interpretation is required by the conclusive presumption cases..... 41

6. If Section 314(c) of FLPMA must be read as forfeiting mining claims without regard for actual known use, it is unconstitutional..... 49

C. Conclusion..... 51

TABLE OF AUTHORITIES

CASES

	Page
Adams v. Witmer, 271 F.2d 29 (9th Cir. 1958)....	18
Barber v. Gonzales, 347 U.S. 637 (1954).....	26
Bell v. Burson, 402 U.S. 535 (1971).....	43,44 46,47 48
Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963).....	18,19
Bradford v. Morrison, 212 U.S. 389 (1909).....	12
Cameron v. United States, 252 U.S. 450 (1920).....	16,18
Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974).....	43,44 46,47 48
Del Giorgio v. Powers, 27 Cal. App.2d 668, 81 P.2d 1006 (1938).....	37
Ex parte United States, 101 F.2d 870 (7th Cir. 1939), aff'd sub nom. United States v. Stone, 308 U.S. 519 (1939).....	25

Page

Farrell v. Lockhart,
210 U.S. 142 (1908)..... 12,27

Forbes v. Gracey,
94 U.S. 762 (1877)..... 11,12

Hickel v. Oil Shale Corp.
400 U.S. 48 (1970)..... 41

Hodel v. Virginia Surface
Mining & Reclamation
Ass'n., 452 U.S. 264,
(1981)..... 19

Howard v. Federal Crop Ins.
Corp., 540 F.2d 695
(4th Cir. 1976)..... 24

Judson v. Malloy,
40 Cal. 299 (1870)..... 27

Kleppe v. New Mexico,
426 U.S. 529 (1976)..... 14,15
16

Leverly v. United States,
162 F.2d 79 (10th Cir. 1947)... 26

Light v. United States,
220 U.S. 523 (1911)..... 15

Locke v. United States,
573 F. Supp 472
(D. Nev. 1983)..... 21,22

Manual v. Wulff,
152 U.S. 505 (1894)..... 12

Martin v. Sterner,
75 Nev. 350, 340 P.2d
1004 (1959)..... 37

Mathews v. Eldridge,
424 U.S. 319 (1976)..... 18

Page

McNally v. Hill,
293 U.S. 131 (1934),
overruled on other
grounds, Peyton v. Rowe,
319 U.S. 54 (1968)..... 25

Morissette v. United States,
342 U.S. 246 (1952)..... 24

N.L.R.B. v. Coca-Cola
Bottling Co. of Louisville,
350 U.S. 264 (1956)..... 26

Orchard v. Alexander,
157 U.S. 372 (1895)..... 16,18

Pidgeon v. Lamb,
133 Cal. App. 342,
24 P.2d 206 (1933)..... 13

Short v. Texaco, Inc.,
406 N.E.2d 625 (1980)..... 17

Skaw v. United States,
No. 84-614, slip op.
(Fed. Cir. July 23, 1984)..... 12

Sousa v. First Cal. Co.,
101 Cal. App.2d 533,
225 P.2d 955 (1950)..... 26

Stanley v. Illinois,
405 U.S. 645 (1972)..... 43,44
46,47
48

Texaco, Inc. v. Short,
454 U.S. 516, (1982)..... 7,19,20
21,37
38,39
40

Page

Thomas v. United States,
189 F.2d 494 (6th Cir. 1951),
cert. denied, 342 U.S.
850 (1951)..... 26

Topaz Beryllium Co. v.
United States,
479 F. Supp. 309
(D. Utah 1979), aff'd.,
649 F.2d 775
(10th Cir. 1981)..... 29

Tripp v. Silver Dyke Mining Co.,
70 Mont. 120, 224 P. 272
(1924)..... 13

Udall v. Tallman,
380 U.S. 1 (1965)..... 16

Unexcelled Chemical Corp. v.
United States,
345 U.S. 59 (1953)..... 25

Union Oil Co. v. Smith,
249 U.S. 337 (1919)..... 11

United States v. Eaton Shale Co.,
433 F. Supp. 1256
(D. Colo. 1977)..... 13,27
46

United States v. Goldenberg,
168 U.S. 95 (1897)..... 25

United States v. Jones,
542 F.2d 661 (6th Cir. 1976)
aff'd, 580 F.2d 219
(6th Cir. 1978)..... 25

Vlandis v. Kline,
412 U.S. 441 (1973)..... 7,43
44,45
46,47
48

Weinberger v. Salfi,
422 U.S. 749 (1975)..... 7,47
48,49

Western Mining Council v. Watt,
643 F.2d 618 (9th Cir. 1981),
cert. denied,
454 U.S. 1031 (1981)..... 29

Wilbur v. United States
ex rel. Krushnic,
280 U.S. 306 (1930)..... 12,16

CONSTITUTION STATUTES AND REGULATIONS

	Page
U.S. Const. amend. V (Due Process Clause).....	passim
Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, 90 Stat. 2743, codified at 43 U.S.C. §§ 1701-1784	
§ 102(a)(9), 43 U.S.C. § 1701(a)(9).....	35
§ 102(b), 43 U.S.C. § 1701(b)..	10
§ 203, 43 U.S.C. § 1713.....	34
§ 203(d), 43 U.S.C. § 1713(d).....	35
§ 204, 43 U.S.C. § 1714.....	34,36
§ 204(c)(2)(7) and (10), 43 U.S.C. § 1714(c)(2)(7) and (10).....	36
§ 204(c)(2)(12) 43 U.S.C. § 1714.....	36
§ 204(c)(12), 43 U.S.C. § 1714(c)(12).....	39
§ 206, 43 U.S.C. § 1716.....	34
§ 206(b), 43 U.S.C. § 1716(b).....	35
§ 314, 43 U.S.C. § 1744.....	passim
§ 314(c), 43 U.S.C. § 1744(c).....	passim
§ 501-505, 43 U.S.C. §§ 1761-65.....	33
§ 504(g), 43 U.S.C. § 1764(g)..	33
§ 603, 43 U.S.C. § 1782.....	34,35
§ 603(a), 43 U.S.C. § 1782(a)..	36
§ 701, 43 U.S.C. § 1701 (note savings provision)..	10
General Mining Act of 1872, 17 Stat. 91, codified at 30 U.S.C. §§ 21-54.....	10

	Page
30 U.S.C. § 28.....	11,41
Mineral Leasing Act of 1920, 30 U.S.C. § 188.....	14
Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, 91 Stat. 445, codified at 30 U.S.C. §§ 1201-1328.....	21
30 U.S.C. § 28-1.....	30
36 C.F.R. Subpt. 228 (1983):	
Section 228.....	30
Section 228.4.....	31,33
Section 228.4(c).....	31
Section 228.4(f).....	33
Section 228.5.....	31,32
Section 228.5(f).....	31
Section 228.7.....	32,33
Section 228.8.....	31
Section 228.13.....	32
36 C.F.R. Part 9 (1983).....	30
Indiana Dormant Mineral Interests Act, codified at Ind. Code §§ 32-5-11-1 thru 32-5-11-8 (1976)	
43 C.F.R. § 3108.3(1983).....	14,
43 C.F.R. § 3802 (1983).....	30
43 C.F.R. Subpt. 3809 (1983):	
Section 3809.....	30
Section 3809.1-4.....	31
Section 3809.1-6.....	31,32
Section 3809.1-6(a)(4).....	31
Section 3809.1-7.....	33
Section 3809.1-9.....	32
Section 3809.2-2.....	31
Section 3809.3-6.....	32

Page

Section 3809.2-2..... 31
Section 3809.3-6..... 32

Page

OTHER AUTHORITIES

Interagency Department of Justice, Uniform Appraisal Standards for Federal Land Acquisitions..... 35

Lindley, American Law Relating to Mines and Mineral Lands (3d ed. 1972)..... 12,35

Note, The Irrebuttable Presumption Doctrine in the Supreme Court, 87 Har. L. Rev. 1534 (1974).... 42

Public Land Law Review Commission, One Third of the Nation's Land: A Report to the President and to the Congress (1970)..... 8

S. Rep. 94-583, 94th Cong., 1st Sess. (1975)..... 8,9 27,28

Senate Committee on Energy and Natural Resources, Legislative History of the Federal Land Policy and Management Act of 1976 (Publication No. 95-99, GPO 1978)..... 28

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1984

No. 83-1394

UNITED STATES OF AMERICA, et al.,

Appellants

v.

MADISON D. LOCKE, et al.,

Appellees

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

BRIEF FOR AMICUS CURIAE MOBIL OIL CORPORATION IN SUPPORT OF APPELLEES

Pursuant to Rule 36 of the Supreme Court Rules, Mobil Oil Corporation ("Mobil") respectfully tenders its brief as Amicus Curiae in support of the Appellees (the "Lockes"). Mobil has obtained and

submits with this brief the written consent of the Appellants (the "Government") and of the Lockes to participate in these proceedings.

INTEREST OF MOBIL AS AMICUS CURIAE

Mobil is the owner of an unpatented mining claim, located in 1908, which is threatened by the statute undergoing constitutional scrutiny in this proceeding. Mobil has conducted extensive exploration and development activities, and its claim has been in production for many years. Notwithstanding its knowledge of these facts, the Bureau of Land Management (the "BLM") threatens to terminate Mobil's rights for failure to make timely filings under Section 314 of the Federal Land Policy and Management Act of 1976, 30 U.S.C. §§ 1701 et seq. ("FLPMA").

Thus, although Mobil produces different minerals than do the Lockes on claims which they own, both find themselves subject to

the threatened operation of Section 314 of FLPMA. Mobil and the Lockes share the following characteristics:

(1) Each is the owner of unpatented mining claims located prior to the passage of FLPMA.

(2) The mineral deposits located by both the Lockes and Mobil have been removed from the location system, so that these parties may not preserve their rights by relocation of their claims.

(3) Their mining claims are undisputedly valid mining claims, each with a discovery within its boundaries of a valid mineral deposit.

(4) Not only has neither abandoned through non-use, but for many years Mobil and the Lockes have produced minerals from their claims.

(5) The Government knows of the existence of and production from these claims because of materials previously filed with the BLM.

(6) Notwithstanding the Government's knowledge of production from these claims and its knowledge that the claims have not been abandoned in fact, the Government seeks to forfeit them.

Mobil supports generally the positions taken by the Lockes and other amici curiae who support the Lockes. Their briefs present a variety of grounds for affirmance with which Mobil agrees. However, in this brief, Mobil wishes to stress one controlling point: the Fifth Amendment to the Constitution of the United States precludes termination of a producing, unpatented mining claim located prior to 1976 solely for failure to make timely filings under Section 314 of FLPMA, particularly so because the Government knows about the producing status of those claims from its own records.

SUMMARY OF ARGUMENT

The Government's interpretation of Section 314(c) of FLPMA, i.e. that failure to file an annual notice works an automatic forfeiture of an unpatented mining claim, goes beyond the statutory purpose of weeding out stale or abandoned claims and would terminate active claims as well. If the Act must be read in this manner, it is unconstitutional. The reach of the Property Clause is not the controlling issue here. The owner of an unpatented mining claim has vested property rights, and these are protected by the Due Process Clause. The owner of a pre-FLPMA mining claim may lose his rights if he has abandoned the claim as a matter of fact, and abandonment may be demonstrated by non-use. However, when a claim is in use and the Government has evidence of that use, the claim may not be subjected to automatic termination.

The District Court's decision provides a means of saving Section 314(c) while accomplishing the purposes of FLPMA and protecting mining claims which are unabandoned in fact. The saving interpretation would limit administrative determinations of abandonment to truly inactive claims by requiring the BLM to consider other information in its files pertaining to use of the claims before it makes a determination of abandonment. Where a claim owner had failed to make a filing under Section 314 and the BLM had no other evidence of use, the BLM could declare a claim abandoned.

This interpretation of Section 314 is consistent with the well-known meaning of "abandonment" in mining law, the meaning which must be attributed to Congress' choice of the term. The interpretation would accomplish the purposes of Section 314 by weeding out truly stale claims and, in conjunction with other materials on

file with the BLM, providing information on the current status of active claims. Thus, it would not interfere with the management of the public lands.

The saving interpretation would avoid the extinction of producing mining claims. Moreover, it is consistent with the Court's decision in Texaco, Inc. v. Short and the Court's decisions in the conclusive presumption cases such as Vlandis v. Kline. It would permit a meaningful inquiry to be made into abandonment as a matter of fact and would allow the claim owner whose claim actually is in use to demonstrate that fact and thus to avoid the forfeiture effect of Section 314(c).

ARGUMENT

THE FIFTH AMENDMENT PRECLUDES TERMINATION OF A PRODUCING UNPATENTED MINING CLAIM LOCATED PRIOR TO 1976 FOR FAILURE TO MAKE FILINGS UNDER SECTION 314 OF FLPMA.

All parties agree that Section 314 of FLPMA was enacted to serve two purposes.1/ First, Congress sought to establish a mechanism "which would remove the stale claims."2/ "Stale" claims are mining claims on which mining operations are not being conducted and which have fallen into a state of nonuse.3/ Second, Congress sought to establish a "recording system" to provide federal land managers

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1/ See Government Brief, pp. 17-18 and Sierra Club Amicus Brief, pp. 25-27.

2/ S. Rep. 94-583 at 26.

3/ The Public Land Law Review Commission, which made the recommendations to Congress on which Section 314 is predicated, articulated this purpose as one "to clear the public lands of long-dormant mining claims." One Third of the Nation's Land 138 (1970). (emphasis added)

with status information for mining claims.4/

Section 314 is highly effective in accomplishing its first objective. Section 314(c) provides that failure to file a location notice or certificate and an annual affidavit of assessment work or a notice of intention to hold the mining claim "shall be deemed conclusively to constitute an abandonment of the mining claim . . ." Many unused, stale claims have been wiped from the books. If the guillotine effect of Section 314(c) can be limited to the truly stale claims, as the District Court has ruled that it can be, this is commendable. The problem with the position of the Government and of its supporting amici -- that Section 314(c) terminates all claims regardless of their use and vitality -- is overkill. The attempt to forfeit pre-FLPMA claims for

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4/ S. Rep. 94-583 at 65.

failure to file, when these claims are actually in use, does not serve the purposes of FLPMA.5/

A. A Producing Mining Claim is a Property Right Entitled to Protection Under the Due Process Clause.

1. Location of an unpatented mining claim under the General Mining Law of 1872 creates rights which cannot be dispossessed without due process of law.

Under the General Mining Law of 1872, 30 U.S.C. §§ 21-54, citizens of the United States, and those people intending to become citizens, are entitled to enter the public lands, prospect for valuable minerals, and locate a claim if they

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5/ Section 701 of FLPMA, 43 U.S.C. § 1701 note reads in part:

> (a) Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act [October 21, 1976] . . . .
>
> (b) All actions by the Secretary conceived under this Act shall be subject to valid existing rights . . . .

See also Section 102(b), 43 U.S.C. § 1701.

discover a valuable mineral deposit. Discovery gives the locator of a mining claim the rights of exclusive possession of the land for mining purposes and an exclusive right to the minerals contained therein, so long as $100 worth of annual assessment work is expended on the claim. 30 U.S.C. § 28. See also Union Oil Co. v. Smith, 249 U.S. 337 (1919). This right to possession of the land and its minerals can be lost by failure to perform the annual assessment work. 30 U.S.C. § 28. If the original locator fails to perform this work, the land is subject to relocation or to leasing, depending upon the minerals involved and the controlling statute.

The General Mining Law of 1872 gives the locator the opportunity to obtain a patent if certain statutory conditions are met; however, the locator is under no obligation to do so. Valid unpatented mining claims are property "in the fullest sense of the word." Forbes v. Gracey,

94 U.S. 762, 767 (1877); Bradford v. Morrison, 212 U.S. 389 (1909); Manual v. Wulff, 152 U.S. 505 (1894). They represent a grant from the United States of a right of present and exclusive possession. Wilbur v. United States ex rel. Krushnic, 280 U.S. 306, 316 (1930). They may be sold, transferred, mortgaged and inherited. Id. And forfeiture of them by the government can constitute a taking. See Skaw v. United States, No. 84-614, slip op. at 8-9, 12 (Fed. Cir. July 23, 1984).

A locator's rights in a mining claim can be lost by abandonment, as well as by non-performance of assessment work. Farrell v. Lockhart, 210 U.S. 142 (1908). "Abandonment may occur at any time, even after full compliance with the law as to performance of annual labor." Lindley on Mines § 643 (3d ed. 1914).

Abandonment is a common law concept, well-known in mining law, based upon the miner's intention.

> Where a miner gives up his claim and goes away from it without any intention of returning, and regardless of what may become of it, or who may appropriate it, an abandonment takes place, and the property reverts to its original status as part of the unoccupied public domain.

Lindley on Mines § 643 (3d ed. 1914).

Common law requires that abandonment be proved by competent evidence. Pidgeon v. Lamb, 133 Cal. App. 342, 24 P.2d 206, 208 (1933). It will not be presumed. Tripp v. Silver Dyke Mining Co., 70 Mont. 120, 224 P. 272, 274 (1924). A mining claim is assumed to be valid and subsisting in the absence of clear and convincing evidence of abandonment. United States v. Eaton Shale Co., 433 F.2d 1256 (D. Colo. 1977); Tripp v. Silver Dyke Mining Co., supra; Pidgeon v. Lamb, supra.

Thus, an unpatented but unabandoned mining claim has a well-recognized and protected status. A fortiori, if that

claim is in actual use -- as are the claims of the Lockes and of Mobil -- it must be recognized and protected.6/

2. The Due Process Clause, rather than the Property Clause controls the manner in which the Government may deal with an unabandoned pre-FLPMA mining claim.

In its brief the Government asserts that it may do as it wishes upon its public lands, citing Kleppe v. New Mexico, 426 U.S. 529 (1976).7/ However, Kleppe is not helpful in analyzing the power of the Federal Government to forfeit unabandoned mining claims.

6/ Congress has recognized in a related context that producing mineral interests may be cancelled only after more stringent due process protections are provided the owners of those interests than is the case where non-producing mineral interests are involved. Under the Mineral Leasing Act of 1920, 30 U.S.C. § 188, federal oil and gas leases involving known geologic structures may be cancelled only after an appropriate proceeding in a United States District Court, while other oil and gas leases may be cancelled after administrative proceedings. See also 43 C.F.R. § 3108.3.

7/ Government Brief, pp. 15-16; see also Sierra Club Amicus Brief, pp. 54-57.

Kleppe involved the protection of horses and burros running wild on the public domain and the question of whether the Federal or the state statute dealing with them prevailed when the statutes were in conflict. Not surprisingly, the Federal statute was upheld under the Property Clause. Private rights or resources segregated from the public domain into private ownership were not involved.

"[T]he Property Clause is a grant of power only over federal property." Kleppe v. New Mexico, 426 U.S. 529, 537-38 (1976). See also Light v. United States, 220 U.S. 523, 537 (1911) (United States has rights of a proprietor and a sovereign "over the property belonging to it.") Mining claims, in contrast, are interests, accompanied by certain rights, that have been carved out of, or segregated from, the general public domain and belong to private claimants in a way that the wild burros at issue in

Kleppe, supra, do not. See Udall v. Tallman, 380 U.S. 1, 19 (1965) ("location" contemplates a "transfer of title" of the public lands); Wilbur v. United States ex rel. Krushnic, 280 U.S. 306, 316 (1930) ("when the location of a mining claim is perfected under the law, it has the effect of a grant by the United States of the right of present and exclusive possession"); Cameron v. United States, 252 U.S. 450, 460-61 (1920) (quoting Orchard v. Alexander, 157 U.S. 372 (1895), to the effect that the holder of a valid mining claim "has acquired an interest of which he cannot be arbitrarily dispossessed . . . . The government holds the legal title in trust for him, and he may not be dispossessed of his equitable rights without due process of law").

3. The owner of an unpatented mining claim may not be deprived of his property interest without meaningful consideration of the facts pertaining to his use of the claim.

One of the major problems with Section 314 of FLPMA is that it provides no mechanism for the determination of whether or not the mining claims at issue are abandoned in fact and thus stale. Clearly, the owner of a mining claim does not present a mere "non-contractual claim to receive funds from the public treasury [which] enjoys no constitutionally protected status . . .," and which can be disposed of sweepingly, as was the case in Weinberger v. Salfi, 422 U.S. 749, 771-72 (1975). Instead, he or she owns interests in real estate, entitled to full constitutional protection. Cf. the description of severed mineral rights used by the Indiana Supreme Court in Short v. Texaco, Inc., 406 N.E.2d 625, 627 (1980) (these are entitled to "the firmest protection of the Constitution.")

This Court consistently has held that some form of due process proceeding is required before an individual is finally deprived of a property interest. See Mathews v. Eldridge, 424 U.S. 319, 333 (1976). There is room for dispute in particular cases as to what type of procedure may be required, but no room to dispute the "fundamental requirement of due process" of an "opportunity to be heard 'at a meaningful time and in a meaningful manner.'" Id. See also Adams v. Witmer, 271 F.2d 29 (9th Cir. 1958).

With respect to mining claims, the Court has recognized specifically that the owner "may not be dispossessed of his equitable rights without due process of law" and that "[d]ue process in such case implies notice and a hearing." Cameron v. United States, 252 U.S. 450, 461 (1920) (quoting Orchard v. Alexander, 157 U.S. 372 (1895)). See also Best v. Humboldt Placer Mining Co.,

371 U.S. 334 (1963); Hodel v. Virginia Surface Mining & Reclamation Ass'n., 452 U.S. 264, 299-300 (1981) ("Our cases have indicated that the process ordinarily requires an opportunity for 'some kind of hearing' prior to the deprivation of a significant property interest . . . .")8/

Texaco, Inc. v. Short, 454 U.S. 516, 102 S. Ct. 781 (1982), dealing with the Indiana Mineral Lapse Statute, is especially pertinent here. The Court expressly recognized that if there had been use of the mineral interest it could not be forfeited, and that if there were any question as to whether there had been such use, a factual hearing and

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8/ In Hodel, the Court upheld a summary cessation of mining operations under the Surface Mining Control and Reclamation Act of 1977, but only because an emergency situation had been shown and because mine operators [were] afforded prompt and adequate post-deprivation administrative hearings and an opportunity for judicial review." 452 U.S. 264 at 303.

determination of that critical question would be required:

> If there has been a statutory use of the interest during the preceding 20-year period, however, by definition there is no lapse . . . . Thus, no mineral estate that has been protected by any of the means set forth in the statute may be lost through lack of notice. It is undisputed that, before judgment could be entered in a quiet title action that would determine conclusively that a mineral interest has reverted to the surface owner, the full procedural protections of the Due Process Clause -- including notice reasonably calculated to reach all interested parties and a prior opportunity to be heard -- must be provided. 102 S.Ct. 533-34 (1982).

The Government blithely suggests that a hearing may be limited to the question of whether a FLPMA filing was timely made,9/ but Texaco v. Short is against them. There must be fair inquiry into the ultimate facts concerning

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9/ Government Brief, pp. 34-35.

abandonment, specifically including the current status of use of the claims.

B. In Order To Preserve it as Constitutional, Section 314(c) of FLPMA Should Be Limited So That Loss for Failure to File Occurs Only with Mining Claims Abandoned in Fact.

If Section 314(c) of FLPMA could be limited to the truly stale mining claims, those which are not in use, it would not terminate unabandoned claims without due process, its purposes could be achieved, and it could be upheld as constitutional. Texaco, Inc. v. Short, 454 U.S. 516 (1982). In fact, the District Court suggested just such a saving interpretation:

> Even if we concluded that the Lockes had not been deprived of their due process rights, we would still grant their motion for summary judgment based on the legislative history of 43 U.S.C. § 1744 as outlined above. Although that statute seems to create a conclusive presumption of abandonment where the assessment notice is not timely filed [footnote omitted], this construction does not comport with a reasonable

> reading of the statute's legislative history or the law prior to FLPMA.

Locke v. United States, 573 F. Supp. 472, 478 (D. Nev. 1983).

The saving interpretation is practicable because the BLM has a great deal of information about active claims beyond that which is provided under Section 314. The Government can determine with a high degree of comfort, based upon the information in its files -- whether submitted under Section 314 or otherwise - which claims are alive and which have been abandoned in fact. If the Government were required to limit its determinations of abandonment to those claims for which it did not have evidence of use in its files, Section 314 could survive. The Government would not be hindered in its management of the public lands; in fact, it would be operating on a more complete factual basis. Nor would the Government

find the process of terminating stale claims substantially more burdensome. It would issue the same determinations of abandonment that it does now, only to a smaller group of claimants -- eliminating those for whom it has evidence of use in its possession -- and those determinations would become final if not challenged. So long as those against whom abandonment determinations were made had the right to appeal and attempt to demonstrate non-abandonment in fact, vested property rights would be preserved. At the same time, the purposes of Section 314 -- clearing away stale claims and providing current information on the status of active claims -- would be satisfied.

1. "Abandonment" is a term with a well-known, technical meaning which Congress must be deemed to have used deliberately.

Despite the bald assertions of the Government and the Sierra Club that

"abandonment" in Section 314 does not mean abandonment at all (Government Brief, p. 36; Sierra Club Amicus Brief, pp. 48-49),10/ the term "abandonment" must have been used advisedly in light of its well-known meaning at common law and as a term of art in mining law. In Morissette v. United States, 342 U.S. 246, 263 (1952), this Court said:

> [W]here Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed. In such case, absence of contrary direction may be taken as satisfaction with widely accepted definitions, not as a departure from them.

10/ The Government and the Sierra Club argue, in effect, that "abandonment" means forfeiture. The law does not favor forfeiture. Howard v. Federal Crop Ins. Corp., 540 F.2d 695, 697 (4th Cir. 1976).

Under numerous rules of statutory construction Congress must be held to have understood and intended the meaning of the words it used in legislation. Unexcelled Chemical Corp. v. United States, 345 U.S. 59, 64 (1953); United States v. Goldenberg, 168 U.S. 95 (1897); United States v. Jones, 542 F.2d 661, 667 (6th Cir. 1976), aff'd, 580 F.2d 219 (6th Cir. 1978). Statutes are to be construed in harmony with the existing law, including the common law, and as a part of the general and uniform system of jurisprudence. Ex parte United States, 101 F.2d 870 (7th Cir. 1939), aff'd sub nom. United States v. Stone, 308 U.S. 519 (1939). Terms used in a statute which have a definite meaning at common law are presumed to be used in the same sense, and will be so construed unless a contrary intention clearly appears. McNally v. Hill, 293 U.S. 131, 136 (1934); overruled on other grounds Peyton

v. Rowe, 319 U.S. 54 (1968); Thomas v. United States, 189 F.2d 494 (6th Cir. 1951), cert. denied, 342 U.S. 850 (1951); Leyerly v. United States, 162 F.2d 79, 85 (10th Cir. 1947). Where a word has a technical meaning and it is used in the context of that meaning, that word is considered as having been employed in its technical sense. N.L.R.B. v. Coca-Cola Bottling Co. of Louisville, 350 U.S. 264, 269 (1956); Barber v. Gonzales, 347 U.S. 637, 643 (1954). Where the common law meaning and the technical meaning of a word are the same, it is strongly presumed that the word carries that meaning. Sousa v. First Cal. Co., 101 Cal. App. 2d 533, 225 P.2d 955, 960 (1950).

Because FLPMA does not define "abandonment," this Court should construe Section 314(c) consistently with the common law and technical meaning of the word "abandonment"; i.e., as requiring

the concurrence of physical relinquishment of the property and the intention of never returning to it. Farrell v. Lockhart, 210 U.S. 142, 147-48 (1908); United States v. Eaton Shale Co., 433 F. Supp. 1256, 1273-74 (D. Colo. 1977); Judson v. Malloy, 40 Cal. 299, 309-10 (1870).

2. The saving interpretation accomplishes the purposes of Section 314.

Mobil suggests that the Government take cognizance of the variety of information in the BLM files and limit its determination of abandonment to those claims for which it does not have evidence of activity. If Section 314 were applied in this manner, the BLM would accomplish its purpose of identifying and clearing away stale claims.11/ Because this procedure would be based on more complete information, it

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11/ S. Rep. 94-583 at 26.

would provide a more accurate assessment than the Government's current practice does, looking only to Section 314 filings. Similarly, looking at all of the relevant factual information in its files would give the BLM a more accurate record of the current status of mining claims, and thus accomplish this purpose12/ of FLPMA.

The purposes of FLPMA are not served by extinction of producing mining claims under Section 314(c). To the contrary, Congress' articulation of its purpose demonstrates that it had no intent to extinguish producing mining claims.13/ That construction is consistent with

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12/ S. Rep. 94-583 at 65.

13/ In April 1978 the Senate Committee on Energy and Natural Resources published the Legislative History of the Federal Land Policy and Management Act of 1976 (Pub. No. 95-99, Gov't Printing Office 1978). Nowhere in that 1800-page document is there a suggestion that application of Section 314(c) would result in termination of active, producing mining claims.

pertinent case law; the courts have held that "[Section 314(c)] fairly frees up the public domain from dormant and antiquated claims in which no one expresses a current and ongoing interest." (Emphasis added.)14/

Furthermore, with respect to active mining claims, the forms filed annually under Section 314 are far from the Government's best source of basic status

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14/ Topaz Beryllium Company v. United States, 479 F. Supp. 309, 315 (D. Utah 1979) aff'd. 649 F.2d 775 (10th Cir. 1981), Western Mining Counsel v. Watt, 643 F.2d 618, 630 (9th Cir. 1981) cert. denied, 454 U.S. 1031 (1981) ("The purpose [of Section 314(c)] is clearly not to impose a penalty for tardiness in filing, as plaintiffs allege, but simply to free the public lands from stale claims in order to permit sound land use planning and management." (Emphasis added.)

information.15/ However, the Government has extensive information about the land status of active, producing mining claims through other programs.

The Government has promulgated regulations which establish a comprehensive regulatory scheme for mining operations on unpatented mining claims.16/ In the case of every active, producing claim, the claimant must periodically notify the Government of his

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15/ The assessment work affidavit, the notice of intention to hold a mining claim, and the report provided by the Act of September 2, 1958, 30 U.S.C. § 28-1, the alternative documents required by Section 314, frequently are boilerplate and give the Government little or no information about what activity is in fact taking place on the mining claim. An affidavit of assessment work may state only that the requisite amount of labor has been performed on the described property.

16/ See, e.g., 43 C.F.R. § 3809 (1983) (public lands); 36 C.F.R. § 228 (1983) (National Forest lands); 36 C.F.R. Part 9 (1983) (Park Service lands); and 43 C.F.R. § 3802 (1983) (Wilderness lands).

intent to conduct mining operations,17/ must specify what mining operations he proposes to conduct,18/ and must describe safeguards that he intends to employ to protect the environment and reclaim the lands upon completion of his operations.19/ Federal land managers review these proposed plans,20/ prepare and make available to the public either an environmental impact statement or an environmental assessment depending on the character of the proposed operations,21/ modify proposed plans if they deem that course necessary to provide enhanced

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17/ See, e.g., 43 C.F.R. § 3809.1-4; (1983) 36 C.F.R. § 228.4 (1983).

18/ See, e.g., 43 C.F.R. § 3809.1-4 (1983); 36 C.F.R. § 228.4(c) (1983).

19/ See, e.g., 43 C.F.R. § 3809.2-2 (1983); 36 C.F.R. § 228.8 (1983).

20/ See, e.g., 43 C.F.R. § 3809.1-6 (1983); 36 C.F.R. § 228.5 (1983).

21/ See, e.g., 43 C.F.R. § 3809.1-6(a)(4) (1983); 36 C.F.R. § 228.5(f) (1983).

environmental protection or reclamation,22/ and notify the producing mining claimant of the amount of the performance bond he must post before operations are commenced.23/ Federal land managers frequently inspect mining operations to ensure compliance with the approved plan of operations and other statutes and regulations.24/ The Government retains jurisdiction to modify an approved plan of operation if it deems that course

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22/ See, e.g., 43 C.F.R. § 3809.1-6 (1983); 36 C.F.R. § 228.5 (1983).

23/ See, e.g., 43 C.F.R. § 3809.1-9 (1983); 36 C.F.R. § 228.13 (1983).

24/ See, e.g., 43 C.F.R. §§ 3809.3-6 and 36 C.F.R. § 228.7 (1983). It is worth noting more broadly that the BLM operates in a decentralized manner through its network of local offices and that BLM personnel frequently have occasion to visit the mining claims within their territories.

necessary to protect the public interest.25/

Moreover, the owner of an active mining claim frequently must obtain and maintain Government authorizations through processes which provide federal land managers with further status information. These may include rights-of-way for the transmission of electricity to the claims26/ or approvals to construct a pipeline across federal lands.27/ Each such authorization requires the producing mining claimant to pay an annual rental fee which reflects the producing mining claimant's intent to maintain his claim.28/

25/ See, e.g., 36 C.F.R. §§ 228.7 and 228.4(f) (1983); 43 C.F.R. § 3809.1-7 (1983).

26/ The Government may issue power line rights-of-way under FLPMA §§ 501-505.

27/ The Government may issue pipeline rights-of-way under FLPMA §§ 501-505.

28/ See FLPMA § 504(g).

3. The saving interpretation will not impair the Government's management of the public lands.

The specter that, unless this Court enforces Section 314 by threat of extinguishment of producing mining claims, the Government will be unable to properly manage the public lands29/ and efficiently conduct land sales under FLPMA § 203,30/ land withdrawals under FLPMA § 204,31/ land exchanges under FLPMA § 206,32/ and wilderness inventories under FLPMA § 603,33/ is without foundation. Each of these management regimes delegates specific duties to federal land managers, the discharge of which will inform them of

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29/ Government Brief, pp. 4, 17, 18, 32 and 41.

30/ Government Brief, pp. 18-19.

31/ Sierra Club Amicus Brief, p. 18.

32/ Government Brief, p. 18; Sierra Club Amicus Brief at p. 16.

33/ Sierra Club Amicus Brief, p. 15.

the existence of active claims. Consider the following:

(1) FLPMA authorizes the Government to sell or exchange federal lands if, in addition to other criteria, the Government receives fair market value for the interest conveyed.34/ A fair market value appraisal may properly be made only upon inspection of the lands in question;35/ that inspection would reflect on-going mining operations.

(2) The wilderness inventory provisions of FLPMA § 603 provide that "prior to any recommendation for the designation of an area as wilderness, the Secretary shall cause mineral surveys to be conducted by the Geological Survey and

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34/ See FLPMA §§ 102(a)(9); 203(d) and 206(b).

35/ See Interagency Department of Justice publication entitled "Uniform Appraisal Standards for Federal Lands Acquisitions."

the Bureau of Mines to determine mineral values."36/

(3) The withdrawal provisions of FLPMA § 204 require submission to Congress of "a report proposed by a qualified mining engineer, engineering geologist, or geologist which shall include but not be limited to information on: general geology, known mineral deposits, past and present mineral production, mining claims, mineral leases, evaluation of future mineral potential, present and potential market conditions."37/

These provisions contemplate on-the-ground inventories of mineral activities. Consequently, if the Government complies with statutory

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36/ See FLPMA § 603(a). (emphasis added.)

37/ See FLPMA § 204(c)(2)(12). (emphasis added.) Information about active mining claims could also arise through public comment on the action. See, e.g., FLPMA §§ 204(c)(2)(7) and (10).

requirements that have been imposed by it, it will have extensive information about the status of mining claims which it can use in making management decisions.

4. The saving interpretation of Section 314 is compelled by Texaco v. Short.

Despite its attempts to do so, the Government can take no comfort in Texaco, Inc. v. Short, 454 U.S. 516 (1982), to support an attempted automatic forfeiture of rights. The provisions of the Indiana Mineral Lapse Act at issue in that case are consistent with the common law concept of abandonment for long non-use which limits all mineral rights. Del Giorgio v. Powers, 27 Cal. App. 2d 668, 81 P.2d 1006, 1013 (1938); see also Martin v. Sterner, 75 Nev. 350, 340 P.2d 1004, 1006 (1959).

Under the Indiana Mineral Lapse Act, a mineral interest is extinguished if it is unused for 20 years. It was

stipulated as fact in Texaco v. Short that the mineral interest had not been "used" for at least that long. The Indiana Act specifies a period of non-use which reasonably demonstrates abandonment.38/ It also provided a two-year grace period39/ in which mineral owners could set aside that presumed abandonment. "Use" of the claim during the 20-year period is a complete defense

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38/ See the interpretation of the Act given by the Indiana Supreme Court at 406 N.E.2d at 627, quoted in Texaco v. Short, 454 U.S. at 523-24.

39/ Although the Sierra Club chose to address the three-year grace period provided by FLPMA (Sierra Club Amicus Brief, pp. 35-37), the present case does not involve a grace period in any way. The Lockes made the first filings required by Section 314 within that three-year period. Matters came to issue only when the Lockes missed a later filing, due after the grace period had run.

against lapse.40/ If such a statute were at issue here, or if Section 314(c) of FLPMA were so construed, the claims of the Lockes and of Mobil would be fully protected by their production from the claims. The Appellees would prevail because their conduct would demonstrate the critical fact: that there has been no abandonment; "use" of the claims would be a complete defense.

A basic vice of Section 314(c), as the Government would construe it, is not present in the Indiana Mineral Lapse Act

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40/ "We have no doubt that, just as a State may create a property interest that is entitled to constitutional protection, the State has the power to condition the permanent retention of that property right on the performance of reasonable conditions that indicate a present intention to retain the interest." Texaco, Inc. v. Short, 454 U.S. at 529 (emphasis added). "The Indiana statute provides that a severed mineral interest shall not terminate if the owner takes any one of three steps to establish his continuing interest in the property. If the owner engages in actual production . . . the interest is secure." Id. (emphasis added).

involved in Texaco v. Short. The Indiana Act is based upon a demonstrable relationship between an operative fact (no use of a mineral right for 20 years) and the ultimate fact of abandonment. In contrast, Section 314(c) of FLPMA is based upon some presumed relationship between a very different operative fact (making of a late filing) and the ultimate fact of abandonment. The very essence of abandonment is non-use and the intention which that non-use demonstrates on the part of the mining claimant. Thus, the relationship between long non-use and abandonment, and the resulting confirmation of the loss of the abandoned right, are rational and defensible. A late Section 314 filing, pertaining to a claim in actual production, a fact known to the Government from its files, bears little or no rational relationship to the question of abandonment. Late filing satisfies neither the physical

relinquishment nor the intent elements of abandonment, particularly when the claim is in use in fact and the Government knows it.41/

5. The saving interpretation is required by the conclusive presumption cases.

The Government seeks to rely upon the conclusive presumption language of Section 314(c) to forfeit the Lockes' claims for failure to make a timely annual filing. That effort must fail. Analytically, a conclusive presumption is not a presumption in an evidentiary sense at all, but a statement of a rule of

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41/ The Sierra Club is ill-advised in its reliance on Hickel v. Oil Shale Corp., 400 U.S. 48 (1970). Sierra Club Amicus Brief, n.36, pp. 48-49. Hickel held that "failure to do assessment work was evidence of abandonment." 400 U.S. at 56 (emphasis added). However, it also held that in order for the Secretary of the Interior to cancel unpatented mining claims for failure to do assessment work required under 30 U.S.C. § 28, he had to initiate contest proceedings which allow owners of the claims to prove whether the requisite work had in fact been done.

law.42/ Moreover, it is a peculiarly inflexible statement of law, an edict that if one or more specified facts exist, certain consequences inevitably shall follow. As such, it requires searching due process scrutiny. Section 314(c) cannot survive that scrutiny if it must be read to forfeit existing mining claims which have not been abandoned in fact. It is an attempt to correlate a known fact (the failure to file) with the presumed fact (abandonment), and to preclude factual inquiry into the existence of the correlation. It sweeps impermissibly broadly, both because the presumed correlation too infrequently exists and because the presumption precludes the necessary factual investigation with respect to mining claims which are in use.

42/ Note, The Irrebuttable Presumption Doctrine in the Supreme Court, 87 Harv. L. Rev. 1534 (1974).

The Court has dealt thoroughly with problems created by conclusive presumptions in analogous situations in the line of cases culminating in Vlandis v. Kline, 412 U.S. 441 (1973), and Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974). The matter at issue in Vlandis was the residency in fact of college students for tuition purposes; the issue in LaFleur was the physical capability in fact of pregnant school teachers to continue their teaching duties; the issue in Stanley v. Illinois, 405 U.S. 645 (1972), was the fitness in fact of an unmarried father to raise his children; and the issue in Bell v. Burson, 402 U.S. 535 (1971), was whether the inability of an uninsured motorist to post security justified suspension of his driver's license on the basis of fault. In each case, the statute challenged and struck down treated a particular (and insufficient) fact as being dispositive of the underlying issue. In Vlandis, the

particular fact was the residency of a college student at the date of her application to school; in LaFleur, the fact was the pregnancy of the school teacher; in Stanley, the fact was the unmarried status of the father; and in Bell, the fact was the inability of the uninsured motorist to post security.

In each case, this Court found that the conclusive presumption attached to the known fact swept too broadly and failed to correlate closely enough with the actual facts which would satisfy the statutory purpose. In Vlandis, the Court summarized the doctrine as follows:

> In sum, since Connecticut purports to be concerned with residency in allocating the rate for tuition and fees at its university system, it is forbidden by the Due Process Clause to deny an individual the resident rate on the basis of a permanent and irrebuttable presumption of nonresidence, when that presumption is not necessarily or universally true in fact, and when the state has reasonable

> alternative means of making the crucial determination. Ratner, standards of due process require that the state allow such an individual the opportunity to present evidence showing that he is a bona fide resident entitled to the in-state rates.

412 U.S. at 452.

The same analysis fits the irrebuttable presumption of abandonment contained in Section 314(c) of FLPMA. First, it is "not necessarily or universally true in fact" that making a late filing demonstrates the ultimate fact that the claim has been abandoned. That is clear in the present case where the Lockes' claims were in production at the time of the claimed abandonment.

The Court in Vlandis v. Kline, 412 U.S. 441 (1973), required also that there be reasonable alternative means of making the crucial factual determination. The crucial factual determination in the present case is whether there has been

abandonment of the claims, i.e., non-use of the claims coupled with an intent to forego use thereafter. United States v. Eaton Shale Co., 433 F. Supp. 1256 (D. Colo. 1977). The Government does have alternative, clearly reasonable, means of making that factual determination. The Government need only look to other information in the files of the BLM to determine that claims such as the Lockes' or Mobils' are in use and have not been abandoned. Both requirements of Vlandis are satisfied in the present case. Therefore, due process demands that the Lockes' claims not be terminated.

The cases of Bell v. Burson, 402 U.S. 535 (1971), Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974), and Stanley v. Illinois, 405 U.S. 645 (1972), add another important element in the analysis of the present case. Each of these cases involved a threatened deprivation of an existing right. In

Bell, the uninsured motorist faced loss of his driver's license; in Lafleur, the pregnant school teacher was forced to leave her job without pay; and in Stanley, the unmarried father was threatened with the loss of his children. Similarly, in the present case, the Lockes are threatened with the loss of their productive existing mining claims, property rights entitled to constitutional protection.

None of this was changed by the Court's decision in Weinberger v. Salfi, 422 U.S. 749 (1975). For one thing, Salfi recognizes and expressly preserves the analysis and outcome in Vlandis. Salfi distinguishes the "noncontractual claim to receive funds from the public treasury" under the Social Security Act from the claim in Vlandis based upon residency in fact:

> Unlike the statutory scheme in Vlandis, 412 U.S. at 449, 93 S. Ct. 2235, the Social Security Act does not purport to speak in terms of the bona fides of the parties to a marriage, but then make plainly relevant evidence of such bona fides inadmissible.

422 U.S. at 772.

Further, the Court in Salfi concluded that the second test in Vlandis could not be met by claimants under the Social Security Act asserting that marriages which failed to meet the statutory duration-of-relationship requirements were not in fact sham. Mr. Justice Rehnquist pointed out that it was very doubtful that individual determinations could effectively filter out a sham arrangement and that "the very possibility of prevailing at a hearing could reasonably be expected to encourage sham relationships." 422 U.S. at 783.

Finally, Salfi does not involve the deprivation of any pre-existing right, as do Bell, LaFleur, Stanley and the present

case. Therefore, while a particularized, individual inquiry into the ultimate facts may not have been required in Salfi, it is here.

6. If Section 314(c) of FLPMA must be read as forfeiting mining claims without regard for actual known use, it is unconstitutional.

If Section 314(c) cannot be limited to mining claims for which there is a reasonable factual basis, considering all pertinent information in the files of the BLM or the absence of information demonstrating use, to conclude that they have been abandoned as a matter of non-use and intent, then Section 314(c) cannot survive.

For claims like the Lockes' which are in use, Section 314(c), if treated as a forfeiture statute, fails on at least three grounds developed in the constitutional cases discussed above, and for the reasons discussed there:

(1) There is no rational, sufficiently narrow justification for termination on the basis of a late filing.

(2) The conclusive presumption of abandonment is not always true in fact, and there are other reasonable means of ascertaining the truth on an individualized basis.

(3) The process deprives people of their existing rights without a fair inquiry into the facts, and an opportunity to be heard on the facts.

The impact of Section 314(c), as interpreted by the Government, on property rights is grossly disproportionate to what the interpretation accomplishes in terms of statutory purposes. Less extreme, equally effective approaches -- or interpretations of Section 314(c) -- are available.

Accordingly, to preserve the constitutionality of Section 314(c), the Court should limit determinations of abandonment to those claims for which there is not evidence of activity within the files of the BLM.

C. Conclusion.

The District Court's decision should be affirmed.

Respectfully submitted.

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CERTIFICATE OF SERVICE

As attorney of record, I hereby certify that three true and correct copies of the foregoing Brief of Amicus Curiae Mobil Oil Corporation in Support of Appellees, were deposited in the United States mail in Denver, Colorado, first-class postage prepaid, on August 17, 1984, addressed to each of the following:

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BRIEF

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Supreme Court of the United States

OCTOBER TERM, 1984

UNITED STATES OF AMERICA, ET AL.,

Appellants,

v.

MADISON D. LOCKE, ET AL.,

Appellees.

On appeal from the United States District Court
for the District of Nevada

Brief Amicus Curiae of Mountain States Legal Foundation

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TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	ii
INTEREST OF AMICUS CURIAE	1
INTRODUCTION	2
STATEMENT OF THE CASE	2
20,000 MINING CLAIMS LOST	3
HARSH AND ABSURD RESULTS CAUSED BY THE CONCLUSIVE PRESUMPTION	5
THE CLAIM JUMPERS	7
CONCLUSION	7

TABLE OF AUTHORITIES

Cases

	Page
Alaskamin Co., 69 IBLA 43 (1980)	2, 6
Donald Klein, Merell Klein, 66 IBLA 212 (1982)	5
Helmut Laue, Arthur J. Devine, 59 IBLA 316 (1982)	6
Locke v. United States, 573 F. Supp. 472 (D. Nev. 1983)	3
Northwest Citizens for Wilderness Mining Co., 33 IBLA 317 (1978)	4
Paul S. Cougey, 35 IBLA 112 (1978)	5
Phillip Brandt, George Vinyard, 54 IBLA 343 (1981)	6
Vivian Sullivan Karlson, 69 IBLA 10 (1982)	6
William Adolph Yonker, 54 IBLA 232 (1981)	5

Statutes, Regulations and Rules

S. Rep. No. 583, 94th Cong., 1st Sess. 64-65 (1975)	2
43 C.F.R. § 3833.1-2 (1982)	4
43 C.F.R. § 3833.1-3	
43 C.F.R. § 3833.2-1(a)(1982)	3, 6
Federal Land Policy and Management Act of 1976, § 314, 43 U.S.C. § 1744 (1982)	2, 6

Publications

U.S. Department of the Interior, Bureau of Land Management, *Questions & Answers, Recording of Mining Claims* (Jan. 1977)	5

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Brief Amicus Curiae of Mountain States Legal Foundation

With the written consent of all parties, the Mountain States Legal Foundation (MSLF or Foundation) respectfully submits this brief as amicus curiae.[1]

INTEREST OF AMICUS CURIAE

MSLF is a nonprofit, membership, public interest law firm dedicated to bringing before courts those issues vital to the defense and preservation of individual liberties, private property rights, and the free enterprise system. The Foundation seeks to protect its members and the public from overly intrusive, unnecessary, and costly governmental regulation.

The instant case is of particular importance to MSLF because of the Foundation's involvement in natural resource law. The Court's decision directly will affect literally hundreds of MSLF's members who operate unpatented mining claims. These members must attempt to comply with section

1. Amicus has filed the consents of all parties with the Clerk of the Court.

314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982), which even many competent attorneys cannot comprehend. *See Alaskamin Co.*, 49 IBLA 43, 44 (1980). From the numerous requests for assistance received by MSLF from its members, Amicus has first-hand experience in the real world application of section 314 and the difficulties of compliance with that statute.

INTRODUCTION

This brief Amicus Curiae will illustrate to the Court the practical impact that section 314 has had on those individuals and companies holding unpatented mining claims on federal land. An overwhelming number of mining claims have been unintentionally lost to the pitfalls of section 314. This brief will present specific fact patterns of Interior Board of Land Appeals (IBLA) cases in which section 314 deprived claimants of active mining claims which they had no intention of abandoning.

Amicus concludes that the Byzantine regulatory labyrinth created by section 314 deprives individuals of private property rights without due process of law. The statute creates a conclusive presumption of abandonment that is often false. In those cases in which the conclusive presumption is wrong, the statute provides no alternative to voiding the claim. Congress intended the statute to clear title to federal lands. *See* S. Rep. No. 583, 94th Cong., 1st Sess. 64-65 (1975). However, no rational relationship exists between clearing title and the conclusive presumption of abandonment that is false more often than not. Therefore, Amicus urges this Court to affirm the decision below and hold section 314 unconstitutional.

STATEMENT OF THE CASE

This is an action challenging the constitutionality of section 314 of the FLMPA, 43 U.S.C. § 1744 (1982). Since the

parties will offer a complete statement of the facts, Amicus merely will summarize the most salient ones.

The Respondents, Madison and Rosalie Locke, mined sand and gravel on their ten unpatented mining claims located on United States land in Nevada. By October 23, 1979, the Respondents had complied with section 314's initial filing requirements concerning the ten claims. In 1980, the Lockes attempted to file their assessment affidavit to show that they had performed at least $100.00 worth of labor on the claims during that year. Relying on representations of Bureau of Land Management (BLM) employees that December 31 filings are timely, the Respondents delivered their affidavit to the BLM office on that date in 1980. The Lockes thereby demonstrated their clear intention not to abandon their locations. Nevertheless, the BLM notified the Lockes that they had failed to comply with 43 C.F.R. § 3833.2-1(a)(1982), which requires filing assessment notices "on or before December 30 of each calendar year . . . ." Thus, the BLM conclusively presumed that the Lockes had abandoned their claims.

However, the BLM was wrong; the Lockes intended to hold and operate their claims. Regardless, based on this false presumption of abandonment, the BLM voided the Lockes' claims. The IBLA, to which the Respondents appealed, affirmed the decision of the BLM. In their suit in the United States District Court for the District of Nevada, the Respondents challenged the constitutionality of section 314. In *Locke* v. *United States*, 573 F. Supp. 472 (D. Nev. 1983), the district court held the statute unconstitutional as a deprivation of procedural due process guaranteed by the Fifth Amendment.

20,000 MINING CLAIMS LOST

In a separately bound appendix to this brief, Amicus details a survey of IBLA cases from 1977 to 1984. In more than 800 IBLA cases, unpatented mining claimants lost almost 20,000 active locations due to the technical rigors and

conclusive presumption of section 314.[1] *See* Appendix to Amicus Brief. The time for filing the required documents presented a major obstacle to compliance. For example, of the 800-plus cases, eighty-four involved the claimant's failure to file a location notice with the BLM within ninety days of locating as required by 43 C.F.R. § 3833.1-2 (1982). In each of those instances, the claimant filed the necessary documents at some time, frequently within ten days of the deadline. *See e.g., Northwest Citizens for Wilderness Mining Co.*, 33 IBLA 317 (1978). In addition, 427 cases involved the claimant's failure to file an affidavit of assessment or notice of intent to hold "prior to" December 30 of any given assessment year. *See e.g., Helmut Lawe, Arthur J. Devine*, 59 IBLA 316 (1982).

In both the location notice and assessment affidavit cases, miners clearly indicated their intention to preserve their claims. But, if the filing were in the least way imperfect, the conclusive presumption of abandonment voided the claim. The technical filing requirements coupled with the conclusive presumption caused the claimants to lose their claims and frustrate the purpose of the Act.

Furthermore, many claimants lost their claims due to noncompliance with the filing fee requirement of 43 C.F.R. § 3833.1-2(d)(1982). Indeed, forty-one cases involved the claimant's failure to include the $5.00 service fee with the filing or to pay the fee until after the set filing date. *See e.g., Vivian Sullivan Karlson*, 60 IBLA 10 (1982).

These claimants who filed without concurrently submitting the filing fee clearly put the BLM on notice of their intention to preserve. Nevertheless, the claimants lacked any procedure to remedy their non-compliance with the filing fee

1. The 800 cases heard by IBLA exemplify a much larger problem since miners appeal to IBLA only those claims which they deem sufficiently valuable to preserve. MSLF knows from firsthand experience that there are many more instances of injustice wrought by section 314 that claimants do not pursue. Thus, the 800 IBLA cases are far from exclusive; they are but the tip of the iceberg.

requirement. Surely the deprivation of a significant private property right without greater procedural safeguards is inconsistent with fundamental notions of due process.

Obviously, claimants face considerable pitfalls in their attempts to understand and comply with section 314. Neither miners nor BLM employees have understood or been able to apply the statute and its related regulations.

Just as in the case at bar, twenty-nine other IBLA cases involved the loss of claims because the claimants relied on incorrect or incomplete information provided by the BLM. BLM employees frequently provide wrong information to claimants who inquire about perfecting their interests. *See e.g., Paul S. Coupey*, 35 IBLA 112 (1978); *William Adolph Yonkee*, 54 IBLA 232 (1981).

Indeed, the BLM's official publications are not even accurate. The government's position becomes untenable given that BLM publications incorrectly explained section 314, that claimants relied on the publications, and yet, lost their claims. BLM has published a document entitled U.S. Department of the Interior, Bureau of Land Management, *Questions & Answers, Recording of Mining Claims* (Jan. 1977). Yet, a later edition of the same title and date contained different interpretations of the Act. Nevertheless, claimants who relied on the former version of this document, containing misinformation, lost their claims.

HARSH AND ABSURD RESULTS CAUSED BY THE CONCLUSIVE PRESUMPTION

Actual cases illustrate the harsh and technical application of section 314. For example, in at least one case, *Donald Klein, Mozell Klein*, 66 IBLA 212 (1982), miners lost their pearlite claims because they filed an *original* notice of intention to hold, rather than a *copy*, with the local BLM office. The appellants had written a letter to the BLM indicating their intention to hold certain claims. The IBLA held that the letter was insufficient because the statute and regulation

require claimants to file a *copy* of the official record of their intention to hold in the local BLM office. Thus, filing the original letter of intention to hold, rather than a copy, led to the loss of the Kleins' claims.

The distinction between a copy and an original exalts form over substance and is unrelated to an intent to abandon the claim. Even if there is a difference between the original and a copy, it cannot be of such magnitude as to warrant the deprivation of a significant private property right.[3]

Phillip Brandl, George Vournas, 34 IBLA 343 (1991), presents even more ludicrous facts. In that case, the BLM voided the appellants' claims for failure to file evidence of 1979 assessment work or a notice of intention to hold the claim by October 22, 1979. *See* FLPMA, § 314(a), 43 U.S.C. § 1744(a); 43 C.F.R. § 3833.2-1(a)(1982). The appellants explained that the filing which they submitted listed their claim as the "No. 2 Above Discovery" as opposed to "No. 2 Below Discovery." This typographical error caused the miners to lose their claims even though they had no intent to abandon them. The conclusive presumption of abandonment precluded any opportunity to cure the defect.

Alaskowsin Co., 49 IBLA 43 (1980), further illustrates the complexity of the rules implementing section 314. In that case, the BLM voided the appellants' claims for failure to file affidavits of assessment for pre-FLPMA mining claims. The appellants filed assessment affidavits for work performed in

3. This case demonstrates the unfairness that the law, and not merely the agency's enforcement, has worked. Section 314 itself requires a copy. Of what substantive difference can it possibly make whether a claimant files a copy or an original with either the county or the BLM office? The conclusive presumption of abandonment allows no alternative to voiding active claims in those instances in which the miner fails to comply with the strict interpretation of the regulations.

1979 instead of 1978. The IBLA held that such filing was incorrect, and consequently, affirmed the BLM's decision.[4]

Clearly, in each of the above cases, as well as in the instant one, the conclusive presumption of abandonment was wrong. Despite the falsity of the presumption, IBLA had no choice but to uphold the BLM's decision to void the claims in question. Whenever the conclusive presumption is false, it deprives claimants of due process in that it bears no relationship to clearing title to federal lands.

THE CLAIM JUMPERS

Perhaps the ultimate inequity of section 314 is the industry spawned by the number of claims lost due to noncompliance with the statute and regulations. Not only has section 314 not solved the evils that Congress sought to address, but it has created greater ones. Corporations scan the BLM land records to see which claims have been recently declared void. They then file new notices of location for the claims. The BLM has no way to verify that these companies did in fact stake the claims. As a result, there are many instances when the location notices are probably not based on new staking, but the veracity of the notices cannot be readily challenged. Congress could not possibly have intended to foster such industry; nor does it have any legitimate purpose in doing so.

CONCLUSION

The above discussion of the overwhelming number of inadvertently lost active mining claims illustrates the unfairness of section 314. The unnecessary complexity of the law, coupled with the statute's conclusive presumption of abandonment, causes miners to lose their claims for reasons that

4. *Alaskowsin Co.* was not alone in suffering an unnecessarily harsh result. Indeed, 120 claimants suffered similarly. *See* Appendix to Amicus Brief at 32-40.

have nothing to do with abandonment. Section 314's conclusive presumption is by no means universally true, as indicated by the loss of 30,000 active mining claims. Consequently, the conclusive presumption of abandonment bears no rational relationship to Congress's purpose of establishing a federal land record system. When it is wrong, the conclusive presumption deprives miners of due process because they have no opportunity to remedy even the most petty defects in their filing documents.[5]

In the Lockes' case, the BLM had more than sufficient notice of the Respondents' intent not to abandon their claim. Indeed, the BLM knew full well that the Lockes' claim was hardly "stale." Nevertheless, the false conclusive presumption deprived the Lockes of a valuable private property right. To deprive an individual of such a significant right based on a conclusive presumption that is far from universally true is contrary to basic notions of fundamental fairness. Because the conclusive presumption thus offends the Fifth Amendment, Amicus urges this Court to affirm the decision below and hold section 314 unconstitutional.

RESPECTFULLY SUBMITTED

/s/ K. Preston Oade, Jr.

Mountain States Legal Foundation

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5. Although it has not addressed the issue of severing the offending language from the balance of section 314, Amicus suggests that absent the language of conclusiveness, the statute might be within Congress's power to enact.

APPENDIX

No. 83-1394

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

UNITED STATES OF AMERICA, ET AL.,

Appellants,

v.

MADISON D. LOCKE, ET AL.,

Appellees.

On Appeal from the United States District Court for the District of Nevada

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Appendix to Brief Amicus Curiae of Mountain States Legal Foundation IN SUPPORT OF AFFIRMANCE

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TABLE OF CONTENTS

PAGE

APPEALS FROM BLM DECISIONS DECLARING MINING CLAIMS LOCATED PRIOR TO OCTOBER 21, 1976 VOID FOR FAILURE TO FILE COPY OF NOTICE OF LOCATION BY OCTOBER 22, 1979 1

APPEALS FROM BLM DECISIONS DECLARING CLAIMS LOCATED PRIOR TO OCTOBER 21, 1976 VOID FOR FAILURE TO FILE AN AFFIDAVIT OF ASSESSMENT OR NOTICE OF INTENT TO HOLD THE CLAIM BY OCTOBER 22, 1979 12

APPEALS FROM BLM DECISIONS DECLARING MINING CLAIMS VOID FOR FAILURE TO FILE A COPY OF THE NOTICE OF LOCATION WITHIN NINETY DAYS OF LOCATION 26

APPEALS FROM BLM DECISIONS DECLARING MINING CLAIMS VOID FOR FAILURE TO PAY $5.00 SERVICE FEE FOR EACH CLAIM WITH ORIGINAL FILING 34

FAILURE TO FILE NOTICE OF LOCATION WITHIN NINETY DAYS BECAUSE FILINGS WERE SENT TO THE WRONG BLM OFFICE .. 38

APPEALS FROM BLM DECISIONS DECLARING MINING CLAIMS VOID FOR FAILURE TO FILE AN ASSESSMENT AFFIDAVIT OR NOTICE OF INTENT TO HOLD THE CLAIM PRIOR TO DECEMBER 31, 1978 40

APPEALS FROM BLM DECISIONS DECLARING MINING CLAIMS VOID FOR FAILURE TO FILE AN ASSESSMENT AFFIDAVIT OR NOTICE OF INTENT TO HOLD THE CLAIM PRIOR TO DECEMBER 31, 1979 47

PAGE

APPEALS FROM BLM DECISIONS DECLARING MINING CLAIMS VOID FOR FAILURE TO FILE AN ASSESSMENT AFFIDAVIT OR NOTICE OF INTENT TO HOLD THE CLAIM PRIOR TO DECEMBER 31, 1980 52

APPEALS FROM BLM DECISIONS DECLARING MINING CLAIMS VOID FOR FAILURE TO FILE AN ASSESSMENT AFFIDAVIT OR NOTICE OF INTENT TO HOLD THE CLAIM PRIOR TO DECEMBER 31, 1981 71

APPEALS FROM BLM DECISIONS DECLARING MINING CLAIMS VOID FOR FAILURE TO FILE AN ASSESSMENT AFFIDAVIT OR NOTICE OF INTENT TO HOLD THE CLAIM PRIOR TO DECEMBER 31, 1982 83

APPEALS FROM BLM DECISIONS DECLARING MINING CLAIMS LOCATED PRIOR TO OCTOBER 21, 1976 VOID FOR FAILURE TO FILE A COPY OF THE NOTICE OF LOCATION BY OCTOBER 22, 1979 PURSUANT TO THE FEDERAL LAND POLICY AND MANAGEMENT ACT § 314(2)(b) 43 U.S.C. § 1744(2)(b) (1982)

Paul S. Coupey, 33 IBLA 178 (1977)(claimant included hand drawn sketches on the bottom of the notice of location where maps were required).

E. M. Koppen, 36 IBLA 379 (1978)(certificates of location found in box in public room of BLM office on April 24, 1978; notices of location were due by October 22, 1979).

Phillip M. Gardiner, 41 IBLA 391 (1979)(deficient notice of location; did not include, inter alia, date of location).

John Walter Chaney, 46 IBLA 229 (1980)(failure to record claim by October 22, 1979).

Carl Oberg, 46 IBLA 319 (1980)(failure to record claim by October 22, 1979).

Glen J. McCrorey, Deloris McCrorey, 46 IBLA 355 (1980)(claim located in 1945; failure to record claim by October 22, 1979).

Wayne Van Dyke, 46 IBLA 358 (1980)(failure to record claim by October 22, 1979; 4 days late).

Sheldon Margen, 47 IBLA 118 (1980)(claims located in 1940 and 1945, owned by the claimant since 1961; failure to record claims by October 22, 1979; BLM received filings on November 13, 1979).

Dwight F. Kennedy, 47 IBLA 132 (1980)(failure to record claims by October 22, 1979; mailed on October 19, 1979, received on October 24; claimant must bear consequences of mail delay).

Fred A. Dunham, 47 IBLA 152 (1980)(19 claims void, located in 1950; proof of labor affidavits had been recorded with the county since 1950; failure to record with the BLM by October 22, 1979).

Jeanne G. Owen, 47 IBLA 172 (1980)(2 claims void for failure to record by October 22, 1979; claimant mailed the filings to the State Department of Natural Resources by mistake, causing delay).

Earl A. Tenley, 47 IBLA 200 (1980)(96 claims; failure to record claims by October 22, 1979; received by BLM on October 24, 1979).

Floyd Zaiger, 47 IBLA 204 (1980)(failure to file notice of location by October 22, 1979; mailed deed and service fee timely).

Santa Fe Nuclear, Inc., 47 IBLA 220 (1980)(failure to record claim by October 22, 1979; received by BLM on October 25, 1979).

Ray F. Coffee, 47 IBLA 217 (1980)(failure to file notice of location by October 22, 1979).

Carl A. Borgstrom, 47 IBLA 232 (1980)(3 claims located in 1955; failure to file notices of location by October 22, 1979).

Edwin Forsberg, 47 IBLA 235 (1980)(3 claims located in 1938 and 1944; failure to file notices of location by October 22, 1979; received October 26, 1979).

Harry J. Phillips, 47 IBLA 252 (1980)(failure to file notice of location by October 22, 1979).

Alva F. Rockwell, Alva A. Rockwell, 47 IBLA 272 (1980)(28 claims, located in 1955; failure to file notices of location by October 22, 1979; erroneous advice from BLM).

James H. Wardle, 47 IBLA 345 (1980)(failure to file notice of location by October 22, 1979; 76 claims void).

Tom Phelps, 47 IBLA 360 (1980)(failure to file notice of location by October 22, 1979).

Norman E. Brooks, 48 IBLA 16 (1980)(failure to file notice of location by October 22, 1979; received October 23).

Robert Willing, 48 IBLA 39 (1980)(failure to file notice of location and affidavit of assessment by October 22, 1979; received October 24).

Darleen Porter, 48 IBLA 55 (1980)(9 claims located between 1903 and 1968; failure to record claims by October 22, 1979; received October 24).

Ross W. Mathews, 48 IBLA 71 (1980)(failure to record claims by October 22, 1979; 32 claims void).

Johnnie Finnegan, Don E. Gordon, Carl Holder, 48 IBLA 79 (1980)(264 claims void; failure to record notices of location by October 22, 1979; filings received October 24).

Jean C. Lepper, 48 IBLA 103 (1980)(3 claims void; failure to file notices of location by October 22, 1979; filed on October 25, 1979).

Helen E. Wallace, 48 IBLA 127 (1980)(claims void for failure to record claims by October 22, 1979; claimant was not aware of filing deadline).

Kenneth K. Parker, 48 IBLA 129 (1980)(2 claims void for failure to file notices of location by October 22, 1979).

George B. Flewelling, 48 IBLA 141 (1980)(claim void for failure to file notice of location and affidavit of assessment by October 22, 1979; received October 31, 1979).

James E. Cooper, 48 IBLA 175 (1980)(3 claims void for failure to record claims by October 22, 1979; ignorance of filing requirements not excused).

Robert Alameda, 48 IBLA 178 (1980)(failure to record claims by October 22, 1979; claimant had worked claims over 50 years; had filed with county office for years; ignorance of filing requirements not excused).

Edward P. Murphy, 48 IBLA 211 (1980)(lode mining claim void for failure to record claims by October 22, 1979).

Joe Rapic, 48 IBLA 255 (1980)(2 lode mining claims located in 1959 void for failure to record location notices by October 22, 1979).

Armando Majalca, 48 IBLA 351 (1980)(lode mining claim void; failure to file notice of location by October 22, 1979).

Frank Otegui, 49 IBLA 40 (1980)(claim void; failure to record claim by October 22, 1979; cannot rely on erroneous BLM information).

Ross Weaver, 49 IBLA 111 (1980)(3 claims void for failure to file notices of location by October 22, 1979; all other documents were filed timely).

G. R. Marquardson, 49 IBLA 114 (1980)(34 claims void for failure to record notices of location by October 22, 1979; map and deed filed October 23).

Lela M. Osborn, 49 IBLA 146 (1980)(34 claims void for failure to file notices of location by October 22, 1979; no location notices filed).

Gale E. Powell, 49 IBLA 173 (1980)(3 quartz claims void for failure to file notices of location by October 22, 1979; received by BLM October 24).

Canyon View Mining Co., 49 IBLA 184 (1980)(6 claims void for failure to file notices of location by October 22, 1979).

Cripple Creek Exploration Corp., 49 IBLA 190 (1980)(31 lode mining claims void; failure to file location notices by October 22, 1979).

Nila Tyrrel, 49 IBLA 267 (1980)(23 claims void; failure to record claims by October 22, 1979).

Virgal M. Taylor, Elizabeth Hutton, 49 IBLA 329 (1980) (3 claims void, located in 1936; notices of location received by BLM on October 23 and 24, 1979 because of delay in mail; failed to record by October 22).

John Lincoln, Jr., 49 IBLA 335 (1980)(2 claims void; failure to file notices of location by October 22, 1979 because not aware of filing date).

Eloise Joyce Williamson, 50 IBLA 42 (1980)(32 claims void; failure to file notices of location by October 22, 1979).

Helen Holland, 50 IBLA 121 (1980)(failure to record claims by October 22, 1979).

George J. Burnett, 50 IBLA 124 (1980)(failure to record claims by October 22, 1979).

Abner Weed, 50 IBLA 141 (1980)(1 claim, located in 1948; failure to file notice of location by October 22, 1979).

Lorraine Mohr, 50 IBLA 147 (1980)(10 claims void; failure to record claims by October 22, 1979; 1 day late).

Lost Pollack Mining & Exploration, Ltd., 50 IBLA 227 (1980)(16 claims void; failure to file notices of location by October 22, 1979).

Elsie Codd, 51 IBLA 43 (1980)(1 claim, located in 1956; failure to record claim by October 22, 1979).

Ed Wardrobe, 51 IBLA 45 (1980)(failure to record claim by October 22, 1979).

Pearl Kelly, 51 IBLA 185 (1980)(7 claims, located in 1937 to 1945; failure to file location notices by October 22, 1979).

John F. Schmelzer, 51 IBLA 188 (1980)(1 claim, located in 1913; failure to file notice of location by October 22, 1979).

County of Imperial, 51 IBLA 250 (1980)(failure to file notice of location by October 22, 1979; earthquake destroyed county courthouse; "no latitude in the law for an Act of God.").

Cleghorn & Washburn Mining Co., 51 IBLA 265 (1980) (76 claims void; failure to record by October 22, 1979; 1 day late).

Edward W. Kramer, 51 IBLA 294 (1980)(failure to file copy of location notice by October 22, 1979).

Melart, Inc., 52 IBLA 5 (1981)(failure to file notices of location by October 22, 1979; 44 claims void).

William E. Talbott, 52 IBLA 12 (1981)(failure to file copy of location notice by October 22, 1979).

Henri Guzek, 52 IBLA 200 (1981)(failure to file notice of location by October 22, 1979).

Kenneth G. Walker, 52 IBLA 214 (1981)(failure to file notice of location by October 22, 1979).

Pearl C. Barnett, 52 IBLA 273 (1981)(1 claim, located in 1924, amended in 1935; failure to record claim by October 22, 1979).

Joe Bastone, 52 IBLA 288 (1981)(2 claims; failure to file notices of location by October 22, 1979).

L. L. Falter, John E. Weeks, 52 IBLA 313 (1981)(failure to file affidavit of assessment or notice of location by October 22, 1979).

William H. Tomporowski, 53 IBLA 21 (1981)(4 claims void; failure to file notices of location by October 22, 1979).

Walter Schivo, 53 IBLA 40 (1981)(1 claim void, located in 1963; failure to file copy of notice of location and map of claim by October 22, 1979; esperia placer mining claim; claimant asserted he filed annual proof of labor with county recorder).

Paul R. Scott, Betty F. Scott, 53 IBLA 75 (1981)(2 placer mining claims void, located in 1948; failure to record claims by October 22, 1979; claimants believed land was privately owned by them).

Clyde W. Luke, Betty J. Luke, 53 IBLA 136 (1981)(1 marcia lode mining claim; failure to file copy of notice of location by October 22, 1979; persons dealing with government presumed to have knowledge of statutes and regulations).

Paula Troester Saragoza, 53 IBLA 247 (1981)(1 tunnel site void; must record by October 22, 1979; appellants asserted lack of knowledge of Federal regulations and contrary to Nevada State law).

Charles M. McGowan III, 54 IBLA 119 (1981)(1 claim void; failure to record claim by October 22, 1979; lack of awareness of FLPMA, no excuse for failure to comply).

Dell Warren, 54 IBLA 159 (1981)(1 claim void; family had held claim for over 40 years; failure to record by October 22, 1979; claimant unaware of recordation requirements).

Howard L. Kirley, 55 IBLA 165 (1981)(19 lode mining claims void; failure to file affidavits of assessment prior to December 31, 1980 claimant has worked the claims for 32 years).

Joseph Ojurovich, 55 IBLA 182 (1981)(1 claim void; failure to file copy of notice of location by October 22, 1979).

Kenneth C. Eichner, 56 IBLA 391 (1981)(3 claims void; failure to file notices of location by October 22, 1979; received by BLM on November 1, 1979).

Norman L. Moon, 57 IBLA 1 (1981)(2 claims void; failure to file notices of location by October 22, 1979).

Petro-Lewis Corp., Partnerhsip Properties Co., 57 IBLA 300 (1981)(2 claims void; failure to record oil placer claims by October 22, 1979).

Erwin Tonne, 57 IBLA 303 (1981)(5 claims void; failure to file notices of location prior to October 22, 1979).

Steven V. Miskoff, 58 IBLA 32 (1981)(10 claims void; failure to file notices of location by October 22, 1979).

Wayne Cook, 58 IBLA 350 (1981)(7 claims void; failure to file notices of location by October 22, 1979).

Frank S. Schiff, 58 IBLA 355 (1981)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980; claimant filed affidavit in 1979; no notice of location filed).

Edgar W. Cook, Marlene Cook, 58 IBLA 358 (1981)(2 claims void; claims located in 1930 and 1950; failure to record by October 22, 1979; notices of location were filed in 1980).

Judy Kelley, George Kelley, 58 IBLA 369 (1981)(1 claim void; located in 1945; failure to record affidavits of assessment by October 22, 1979).

John J. Vikarcik, George W. Vrable, 58 IBLA 377 (1981) (4 claims void; failure to record claim by October 22, 1979; claimant did file affidavits of assessment and maps).

John Silva, 59 IBLA 167 (1981)(1 claim void; failure to file affidavit of assessment by October 22, 1979; claimant attempted to file a letter of intent).

Bruce A. De Rosier, 59 IBLA 283 (1981)(5 claims void; failure to file notices of location by October 22, 1979).

John W. Baccus, 59 IBLA 288 (1981)(7 claims void; failure to file notices of location by October 22, 1979).

Buck A. Rogers, 60 IBLA 59 (1981)(22 claims void; failure to record claims by October 22, 1979).

W.O. Heinze, 60 IBLA 78 (1981)(8 bentonite claims void; failure to file affidavits of assessment prior to December 31, 1980; also no filing of copy of notice of location).

Robert G. Milton, 60 IBLA 104 (1981)(1 claim, located in 1963; failure to file notice of location by October 22, 1979).

Marvin G. Stuck, 60 IBLA 197 (1981)(4 claims void; failure to file affidavits of assessment prior to December 31, 1980; also no recording of notice of location).

El Capitan Oil Co., Inc., 62 IBLA 146 (1982)(1 claim void; failure to file notice of location by October 22, 1979; claimant filed affidavit of assessment in 1979).

Robert S. Verri, 62 IBLA 291 (1982)(1 claim void; failure to file affidavits of assessment prior to December 31, 1980; also failure to file notices of location).

Sidney O. Smith, 62 IBLA 378 (1982)(4 claims void; failure to file notices of location by October 22, 1979; claims located in 1940).

Elsie I. Stewart, Walter G. Stewart, 63 IBLA 153 (1982) (2 claims void; failure to file notices of location by October 22, 1979).

Daryl E. Bartholemew, 63 IBLA 198 (1982)(1 claim void; failure to file notice of location by October 22, 1979).

Kivalina River Mining Association, 65 IBLA 164 (1982)(1 lode claim void; failure to file affidavit of assessment by October 22, 1979).

Joe Karran, Sr., 65 IBLA 387 (1982)(1 claim void; failure to file affidavit of assessment by October 22, 1979).

F.F. Davenport, 68 IBLA 198 (1982)(1 claim void; failure to file notice of location by October 22, 1979).

M.E. Rogers, 47 IBLA 196 (1980)(10 claims, located in 1950; filed maps with statements on them that assessment work was done, with filing fees; deficient filing, required by October 22, 1979).

G.H. Monk, 47 IBLA 213 (1980)(failure to file proper notice of location by October 22, 1979).

Andrew W. Berg, 47 IBLA 238 (1980)(29 claims; failure to file notices of location by October 22, 1979; made deficient filings).

Edward G. Taylor, 47 IBLA 286 (1980)(failure to file notice of location by October 22, 1979; claimant filed deed, notice of labor and filing fee).

Jean L. Greene, 47 IBLA 309 (1980)(failure to file notice of location by October 22, 1979).

William and Marie Blanchard, 47 IBLA 312 (1980)(failure to file notice of location by October 22, 1979).

Sylvan S. Hewitt, Dennis Wallace, 47 IBLA 393 (1980)(failure to file notice of location by October 22, 1979).

Bernard A. Schmid, 48 IBLA 48 (1980)(failure to record claims by October 22, 1979).

Andy Syndbad, 48 IBLA 87 (1980)(2 claims void; failure to file notices of location and affidavits of assessment by October 22, 1979).

John Hudspeth, Floreine Hudspeth, 48 IBLA 99 (1980) (failure to file notice of location by October 22, 1979).

John F. Sherwood, 48 IBLA 180 (1980)(2 claims void for insufficient filings on October 22, 1979).

Lowell Becker, Billie Peterson, 48 IBLA 203 (1980)(claim void for failure to file notice of location by October 22, 1979; claim acquired by quitclaim deed on May 22, 1979).

George W. Cole, 49 IBLA 128 (1980)(50 claims void for failure to file notices of location by October 22, 1979).

Glen Hocking, 49 IBLA 217 (1980)(8 claims void; failure to record claims by October 22, 1979; some filings, were insufficient due to ignorance of filing requirements).

Hugh A. Johnson, 50 IBLA 47 (1980)(failure to file notice of location by October 22, 1979).

Margaret Covert, 50 IBLA 58 (1980)(failure to file notice of location by October 22, 1979).

Cleo May Fresh, Marjorie P. Deterts, 50 IBLA 363 (1980)(claims located in 1949; failure to file notices of location by October 22, 1979).

Robert E. Donahue, 50 IBLA 374 (1980)(failure to file notice of location by October 22, 1979).

Wayne E. Clutis, 50 IBLA 379 (1980)(failure to file affidavit of assessment or notice of intent to hold by October 22, 1979).

Melvin E. Viles, 51 IBLA 32 (1980)(failure to file notice of location by October 22, 1979).

J.K. Kendrick, 51 IBLA 56 (1980)(failure to file notice of location by October 22, 1979).

Eva Holmes, 51 IBLA 140 (1980)(1 claim void; insufficient filings on October 22, 1979).

Stephen Greist, 51 IBLA 287 (1980)(claims located in 1953 and 1954; language difficulties from Alaska Native).

Marvin E. Brown, Ione M. Brown, 52 IBLA 44 (1981)(2 claims, located in 1950; failure to file notices of location by October 22, 1979).

Mrs. Randolph G. Muniz, 54 IBLA 237 (1981)(2 claims void; failure to file copies of notices of location by October 22, 1979; notices of assessment work timely filed; notices of location inadvertently omitted).

Sidney Hodges, John Golden, 55 IBLA 17 (1981)(2 claims void, located in 1948; wrote to BLM about pending patent application in September 1979; failure to file copy of notices of location by October 22, 1979).

Park City Chief Mining Co., 57 IBLA 346 (1981)(2 claims void, located in 1914; failure to file notices of location by October 22, 1979).

Harvey A. Clifton, 60 IBLA 29 (1981)(1 claim void; failure to record claim by October 22, 1979; filed properly for other claim; deficiency is curable when one complies with the statute).

APPEALS FROM BLM DECISIONS DECLARING CLAIMS LOCATED PRIOR TO OCTOBER 21, 1976 VOID FOR FAILURE TO FILE AN AFFIDAVIT OF ASSESSMENT OR NOTICE OF INTENT TO HOLD THE CLAIM BY OCTOBER 22, 1979 PURSUANT TO THE FEDERAL LAND POLICY AND MANAGEMENT ACT, § 314(1), 43 U.S.C. § 1744 (1976) AND 43 CFR § 3833.2 (1982)

David V. Udy, 45 IBLA 389 (1980)(failure to file affidavit of assessment in 1978; failure to include serial numbers in filing).

Robert W. Hansen, Federal Bentonite Co., 46 IBLA 93 (1980)(20 claims void; failure to file affidavits of assessment by October 22, 1979; claimant sent a letter, BLM found it to be insufficient as either a notice of intent to hold or an affidavit of assessment).

Clarence W. and Anna F. Owens, 47 IBLA 149 (1980)(void for failure to file affidavit of assessment by October 22, 1979).

Betty and Clarence L. Guffey, 47 IBLA 175 (1980)(2 claims void for failure to file affidavits of assessment by October 22, 1979).

Jim Adams, 47 IBLA 281 (1980)(failure to file affidavit of assessment by October 22, 1979).

Anna M. Vance, 47 IBLA 357 (1980)(6 claims located in 1921; failure to file notice of location by October 22, 1979; filings received October 24).

Alice E. Deetz, 48 IBLA 59 (1980)(2 claims, located 1948; failure to file affidavits of assessment by October 22, 1979).

A.J. Grady, 48 IBLA 218 (1980)(1 claim, located in 1942; void for failure to file affidavit of assessment by October 22, 1979).

A.W. Josue, 48 IBLA 225 (1980)(2 claims void for failure to file affidavits of assessment by October 22, 1979).

Dollie L. Gloab, 48 IBLA 404 (1980)(4 claims void; failure to file affidavits of assessment by October 22, 1979).

George Stillman, 49 IBLA 150 (1980)(1 claim void, located in 1946; failure to file affidavit of assessment by October 22, 1979).

Century XXI Mining, Inc., 49 IBLA 166 (1980)(2 claims located in 1954 void for failure to file affidavits of assessment by October 22, 1979).

Alfred Letcher, 49 IBLA 193 (1980)(7 claims void; failure to file affidavits of assessment by October 22, 1979; claimant received misinformation from BLM handout).

Margaret J. Wilson, 49 IBLA 228 (1980)(1 claim void; failure to file affidavit of assessment by October 22, 1979; affidavit filed October 31).

Max Weiss, 49 IBLA 332 (1980)(17 claims void; failure to file affidavits of assessment by October 22, 1979 despite claimant's good faith effort to comply).

Vernon G. and Shirley Wickham, 50 IBLA 1 (1980)(failure to file affidavit of assessment by October 22, 1979).

Don Sagmoen, Perry Adkison, Flord I. Jones, 50 IBLA 85 (1980)(failure to file affidavit of assessment by October 22, 1979).

John J. Schnabel, 50 IBLA 201 (1980)(4 claims located in 1946; failure to file affidavits of assessment by October 22, 1979).

Milburn Downey, 50 IBLA 212 (1980)(failure to file affidavit of assessment by October 22, 1979).

Donald D. Vesely, 50 IBLA 277 (1980)(failure to file affidavit of assessment by October 22, 1979).

Stanley Bishop, 50 IBLA 371 (1980)(failure to file affidavit of assessment by October 22, 1979).

Joseph V. Dodge d.b.a. Rocky Mountain Mineral Co., 50 IBLA 394 (1980)(19 claims void; failure to file affidavits of assessment by October 22, 1979; received incorrect information from BLM).

Peter and Rinda Hasson, 51 IBLA 17 (1980)(failure to file affidavit of assessment by October 22, 1979).

Santa Monica Hospital Medical Center Foundation, 51 IBLA 194 (1980)(failure to file affidavit of assessment or notice of intent to hold by October 22, 1979).

James V. Brady, 51 IBLA 361 (1980)(failure to file affidavit of assessment by October 22, 1979).

Alex Pinkham, Mary Anne Pinkham, 52 IBLA 149 (1981)(failure to file affidavit of assessment by October 22, 1979).

Lloyd Cochran, 52 IBLA 231 (1981)(failure to file affidavit of assessment by October 22, 1979).

Johannes Soyland, 52 IBLA 233 (1981)(9 claims void; failure to file affidavits of assessment by October 22, 1979).

Dan Creek Placer Mines, 52 IBLA 243 (1981)(28 claims void; failure to file affidavits of assessment by October 22, 1979).

Lowell L. Patten, 52 IBLA 299 (1981)(2 claims; failure to file affidavits of assessment by October 22, 1979).

Lloyd M. Buttgereit, 52 IBLA 363 (1981)(failure to file affidavit of assessment by October 22, 1979).

Verla Rhoads, Rene Morgan, 52 IBLA 393 (1981)(13 claims void; failure to file affidavits of assessment by October 22, 1979 as required by FLPMA).

Kerry and Ingrid Douglas, 53 IBLA 18 (1981)(4 claims void; failure to file affidavits of assessment by October 22, 1979, also no notices of intent to hold claims; claimant suggested BLM lost files; deemed conclusively abandoned).

Palmyra Mines, Inc., 53 IBLA 89 (1981)(14 claims void; failure to file affidavits of assessment by October 22, 1979; claimant contended BLM employee said documents would be accepted late).

Janice Fay Ondreako, I. D. Monaghan, 53 IBLA 128 (1981)(2 chromium lode claims, located in 1939 and 1963; failure to file affidavits of assessment by October 22, 1979; filed in 1980; appellants claim proofs of labor were either misplaced or lost in the mail).

St. Francis Mining Co., 53 IBLA 133 (1981)(2 lode mining claims void; failure to file affidavits of assessment by October 22, 1979 or notices of intent to hold; erroneous information from the BLM; claimant cannot rely on erroneous information from BLM).

Lynn Keith, 53 IBLA 192 (1981)(87 claims void; failure to file affidavits of assessment by October 22, 1979; alleged erroneous information by BLM; appellant challenged regulations as arbitrary, capricious and unconstitutional).

Mr. and Mrs. Jack White, 53 IBLA 267 (1981)(3 claims void; failure to file affidavits of assessment by October 22, 1979; one must bear the consequences of mail delay; appellants also asserted unconstitutional taking of property under Fifth and Fourteenth amendments).

John Plutt, Jr., 53 IBLA 313 (1981)(2 limestone claims void; failure to file affidavits of assessment by October 22, 1979; claimants relied on advice of BLM employees regarding time for filing).

United States v. *Paul M. Koenigsmark*, 53 IBLA 377 (1981)(12 oil shale claims void, located in 1920; failure to file affidavits of assessment by October 22, 1979).

Bill C. Ross, 54 IBLA 116 (1981)(6 claims void, located in 1927; failure to file affidavits of assessment because of delay by the county recorder; lack of awareness of BLM recordation requirements does not excuse compliance).

Charley E. Gossett, Jr., 54 IBLA 139 (1981)(57 claims void; failure to file affidavits of assessment by October 22, 1979; filing in the county clerk's office does not meet requirements of FLPMA).

Hugh A. Johnson, 54 IBLA 144 (1981)(72 claims void; failure to file affidavits of assessment by October 22, 1979; claimant challenges FLPMA section as unconstitutional taking of property without due process).

Lyman Mining Co., 54 IBLA 165 (1981)(15 claims void; failure to file affidavits of assessment by October 22, 1979; erroneous information from BLM; claimant argued that when there is evidence of BLM confusion and irregularity, concerned miner's good faith attempt to comply, Board should vacate BLM decision).

Clayton v. *Curtis*, 54 IBLA 184 (1981)(2 claims void; failure to file affidavits of assessment by October 22, 1979; filing with county clerk does not meet BLM requirements).

Emery Crowley, 54 IBLA 229 (1981)(8 claims void; failure to file affidavits of assessment prior to December 31, 1979; affidavits actually due October 22).

William Adolph Yonkee, 54 IBLA 232 (1981)(3 claims, located in 1907 and 1917; failure to file affidavits of assessment by October 22, 1979; incomplete information from BLM; claimant thought notices of location could double as notices of intention to hold).

George H. Willis, 54 IBLA 239 (1981)(10 claims void, located in 1952 and 1953; failure to file affidavits of assessment by October 22, 1979).

Robert Keough, 54 IBLA 337 (1981)(1 claim void, located in 1941; failure to file affidavit of assessment by October 22, 1979).

Philip Brandl, George Vournas, 54 IBLA 343 (1981)(1 claim void, located in 1906 and owned by the claimant since 1947; a typographical error on affidavit of assessment prevented the BLM from crediting it to this claim).

Reg Whitson, 55 IBLA 5 (1981)(4 claims void; failure to file affidavits of assessment by October 22, 1979; appeal dismissed because BLM had not yet taken adverse action).

Robert C. Cluzen, 55 IBLA 12 (1981)(10 claims void; failure to file affidavits of assessment by October 22, 1979).

Betty L. Henry, 55 IBLA 47 (1981)(1 claim void, located in 1954; notice of location filed August 27, 1979; failure to file affidavit of assessment by October 22, 1979).

Bruce L. Baker, Robert C. Baker, 55 IBLA 55 (1981)(1 claim void; failure to file affidavit of assessment by October 22, 1979; BLM reversed; claimants established location of "missing" documents).

Mart I. Gilmore, 55 IBLA 128 (1981)(1 claim void; located in 1939; failure to file affidavit of assessment by October 22, 1979).

Margaret E. Peterson, 55 IBLA 136 (1981)(1 claim void, located in 1956; failure to file affidavit of assessment by October 22, 1979).

Alberta K. Romerio, 55 IBLA 140 (1981)(22 claims void; failure to file affidavits of assessment by October 22, 1979).

W. LeGrande Law, 55 IBLA 193 (1981)(2 claims void; failure to file affidavits of assessment by October 22, 1979; claims located in 1959; claimant confused by contrary state law).

William N. Barbat, 56 IBLA 26 (1981)(229 claims void; failure to file affidavits of assessment by October 22, 1979; filed notices of location timely).

Robert E. Fennell, Clair B. Colburn, d.b.a. Colfensch Mining Associations, 56 IBLA 43 (1981)(49 claims, located in 1954-55; failure to file affidavits of assessment by October 22, 1979; filed notices of location timely).

Thomas Williams, 56 IBLA 55 (1981)(1 claim void; failure to file affidavit of assessment by October 22, 1979; claimant had filed notice of location in March, 1979).

Walter D. Cosdon, 56 IBLA 112 (1981)(1 claim void, located in 1948; failure to file affidavit of assessment by October 22, 1979; claimant received incomplete information from the BLM; notice of location was properly filed).

L.D. Lamoureaux, 56 IBLA 298 (1981)(1 claim void; failure to file affidavit of assessment by October 22, 1979).

William E. Bowman, 56 IBLA 312 (1981)(4 claims void; failure to file affidavits of assessment by October 22, 1979; filed notices of location timely).

Bill Kaser, 57 IBLA 51 (1981)(1 claim void; failure to file affidavit of assessment prior to October 22, 1979; received by BLM October 26, 1979).

D.E. Bailey, 57 IBLA 120 (1981)(3 claims void; failure to file affidavits of assessment prior to October 22, 1979).

Gordon M. Riggs, 57 IBLA 122 (1981)(1 claim void; failure to file affidavit of assessment prior to October 22, 1979).

Ervin D. Mull, Paul Eichnolz, 57 IBLA 278 (1981)(1 claim void, located in 1950; failure to file affidavit of assessment prior to October 22, 1979).

Heidelberg Silver Mining Co., Inc., 58 IBLA 10 (1981) (31 mining and tunnel site claims void; located 1927 to 1970; failure to file affidavits of assessment by October 22, 1979; received by the BLM on October 29).

James N. Tibbals, Janet D. Tibbals, 58 IBLA 42 (1981)(1 claim void; located August 27, 1875; failure to file affidavit of assessment by October 22, 1979; BLM received affidavit on November 1, 1979; BLM had received a letter from claimant on October 5; BLM sent notice to incorrect address).

John Murphy, Walter C. Henderson, 58 IBLA 75 (1981)(3 claims void; failure to file affidavits of assessment by October 22, 1979; claimant received incorrect information from BLM pamphlet).

Grant Kirkham, Roberta Kirkham, 58 IBLA 131 (1981)(2 claims; void *ab initio* in part because parts were in areas not open to location; also no affidavits of assessment by October 22, 1979).

Modec Gem and Mineral Society, 58 IBLA 142 (1981)(1 claim void; affidavit of assessment filed October 15, 1979; on January 14, 1980 it was returned, no serial number; claimant sent it back, assigned a number September 24, 1980, submitted 1980 affidavit of assessment; BLM requested more information with map — returned May 26, 1981; needed information on October 22, 1979, so claims conclusively void; IBLA held the BLM should never have assigned a serial number).

H.S. Rademacher, 58 IBLA 152 (1981)(20 claims void; no affidavits of assessment filed by October 22, 1979; other filing sufficient; claimant claims he mailed it, BLM or post office lost them).

United States Energy Corp., 58 IBLA 159 (1981)(57 claims void; failure to file affidavits of assessment by October 22, 1979; claimant believes presumed abandonment without notice and opportunity for hearing violates fifth amendment due process).

Ben Hester, 58 IBLA 163 (1981)(4 claims void; no affidavits of assessment by October 22, 1979; located prior to 1976; recorded July 18, 1979; tried to file by December 30, 1980 but they arrived on January 5, 1981; sketchy description of work done filed).

Ray Nyce, 58 IBLA 192 (10 claims; failure to file affidavits of assessment by October 22, 1979; located in July, 1976; filed October 12, 1979).

Albert L. Fillerup, 58 IBLA 194 (1981)(9 claims void; failure to file affidavits of assessment prior to October 22, 1979; proper filing in 1980).

Freemont Energy Corp., 58 IBLA 197 (1981)(3 claims void for failure to file affidavits of assessment by October 22, 1979; claims located in 1955; recorded October 15, 1979).

John T. Titus, 58 IBLA 207 (1981)(17 claims void for failure to file affidavits of assessment by October 22, 1979; claims located prior to 1976; notice of location filed December 26 and 29, 1978).

George D. Morrill, H. Grant Noble, 58 IBLA 211 (1981)(2 claims void; failure to file affidavits of assessment by October 22, 1979; claims located in 1949; recorded September 20, 1979; "proof of labor" for year ending 1980, filed August 1980; claimant filed in 1980, not in 1979).

Tom Applegarth, 58 IBLA 224 (1981)(2 claims void; failure to file notices of location by October 22, 1979; claims located in 1940 and 1941).

Riter Ekker, Kerry B. Ekker, 58 IBLA 251 (1981)(5 claims void; failure to file notices of intent to hold prior to October 22, 1979; claims located in Glen Canyon National Recreation Area; claimants had filed notices of intent to hold for 1978, 1979 and 1980).

Ralph A. Plumb, 58 IBLA 254 (1981)(1 claim void; failure to file affidavits of assessment by October 22, 1979; claimant asserted it was lost in the mail).

Heirs of Raymond D. Carson, 58 IBLA 265 (1981)(5 claims void; located in 1940; failure to record claim by October 22, 1979).

Bernard E. Packard, 58 IBLA 308 (1981)(16 claims void; failure to file affidavits of assessment by October 22, 1979; affidavit received December 19, 1979).

Lloyd P. Webster, 58 IBLA 363 (1981)(84 claims void; failure to file affidavits of assessment by October 22, 1979; affidavits filed February 4, 1980 for 1979 assessment year and 1980 affidavits filed August 29, 1980).

Enterprise Mines, Inc., 58 IBLA 372 (1981)(26 claims void; failure to file affidavits of assessment by October 22, 1979; notice of location filed timely).

John Evenhoff, 58 IBLA 403 (1981)(3 claims void; claimant filed notices of location on October 4, 1979; no affidavits of assessment filed until December 30, 1980; claimant suggests the affidavits were lost in the mail).

Judy H. Genger, 59 IBLA 199 (1981)(9 claims void; failure to file affidavits by October 22, 1976).

Edward Kelley, 59 IBLA 250 (1981)(2 claims void; failure to file affidavits of assessment by October 22, 1979; claimant requested information from the BLM, it was incomplete).

Samuel Waldenberg, 59 IBLA 390 (1981)(1 claim void; failure to file affidavit of assessment by October 22, 1979; location notice was filed).

All Minerals Corp., 60 IBLA 85 (1981)(35 claims void; failure to file affidavits of assessment prior to October 22, 1979).

Junerwanda J. Papoulias, Mildred Lucille Gulick, 60 IBLA 128 (1981)(10 claims void; failure to file affidavits of assessment by October 22, 1979; claimant believed the BLM lost the document).

F & F Mining Co., Inc., 60 IBLA 178 (1981)(21 claims void; BLM listed reason for rejecting claims was failure to file affidavits of assessment prior to December 31, 1978; however, the filing requirement was not triggered until the first affidavit is filed during the 3 year period, according to *Harvey Clifton*; filing due October 22, 1979, was received in December; BLM said they could have lost the documents).

George Vincent McMahon, 60 IBLA 187 (1981)(2 claims void, located in 1930 and 1931; failure to file affidavits of assessment by October 22, 1979).

Everett V. Cohoe, 60 IBLA 235 (1981)(3 lode claims void; failure to file affidavits of assessment by October 22, 1979).

C.F. Turley, Jr., 60 IBLA 237 (1981)(10 claims void; failure to file affidavits of assessment by October 22, 1979; BLM opinion erroneously said it was due on December 31, 1981).

West Fork Mining Co., 60 IBLA 370 (1981)(46 claims void; failure to file affidavits of assessment prior to October 22, 1979; received by BLM on November 5).

Carl B. Anderson, 61 IBLA 4 (1981)(10 claims void; failure to file notices of location by October 22, 1979).

Samantha Bowman, 61 IBLA 20 (1981)(2 claims void; failure to file affidavits of assessment prior to October 22, 1979).

Herman Piltz, 61 IBLA 113 (1982)(2 lode claims void; failure to file affidavits of assessment by October 22, 1979).

William M.M. Underwood, 61 IBLA 172 (1982)(2 claims void; failure to file affidavits of assesment by October 22, 1979).

Michael Mooney, 61 IBLA 210 (1982)(4 claims void; failure to file notices of location by October 22, 1979).

Dee Wright, 61 IBLA 356 (1982)(8 placer claims void; failure to file affidavits of assessment prior to October 22, 1979).

Otay Mining Co., 62 IBLA 166 (1982)(1 claim void; failure to file affidavit of assesment on October 22, 1979; claimant received incorrect information from BLM pamphlet).

Armin P. Kanzler, 62 IBLA 224 (1982)(1 claim void; failure to file affidavit of assessment by October 22, 1979; claimant filed notice of location timely).

Eugene Fox, 62 IBLA 232 (1982)(35 claims void; claimant waited to file letter of intent to hold until BLM authorized strip mine; claim located in the 1950's; claimant filed notice of location and "intents to hold" on October 15, 1979; no affidavits of assessment filed by October 22, 1979).

Martin Slisco, 62 IBLA 260 (1982)(4 claims void; failure to file affidavits of assesament by October 22, 1979; claims recorded in September 1979).

Henry Chavez, 62 IBLA 312 (1982)(5 claims void; failure to file affidavits of assessment prior to October 22, 1979; claimant filed for other claims).

George Fauver, 62 IBLA 399 (1982)(1 placer claim void; failure to file affidavit of assessment by October 22, 1979; claimant suggested that the BLM lost the documents).

Frances J. Darger, 63 IBLA 67 (1982)(1 claim void; failure to file affidavit of assessment by October 22, 1979; claim was located in 1923; claim was recorded in 1979).

Paul J. Lambrix, 63 IBLA 170 (1982)(2 claims void; failure to file affidavits of assessment by October 22, 1979; claimant has worked claim since 1939; proper filing of location notice).

D.F. Colson, 63 IBLA 221 (1982)(31 claims void; failure to file affidavits of assessment by October 22, 1979; claims located from 1927 to 1971).

Stanley Simms, 64 IBLA 257 (1982)(4 claims void; failure to file affidavits of assessment by October 22, 1979).

Utah Calcium Co., Inc., 64 IBLA 402 (1982)(5 claims, located in 1941; failure to file affidavits of assesament prior to October 22, 1979; proper filings of notices of location; claimant suggested that the BLM lost the documents).

Mermaid Mining Co., 65 IBLA 172 (1982)(15 claims void; failure to file affidavits of assesment prior to October 22, 1979).

James Heldman, 65 IBLA 180 (1982)(11 claims void; failure to file affidavits of assesment prior to October 22, 1979; claimant suggested the BLM lost the documents; necessary records are inaccessable in warehouse storage).

Manuel R. Hernandez, 65 IBLA 281 (1982)(10 claims void, located in 1969; failure to file affidavits of assessment prior to October 22, 1979).

Cruz M. Chaves, 67 IBLA 270 (1982)(3 lode claims void; failure to file affidavits of assessment prior to October 22, 1979; claims located in 1953, 1956, and 1963; 100-ton mill on-site).

Blanche W. Peterson, 67 IBLA 388 (1982)(12 claims void; failure to file affidavits of assessment prior to October 22, 1979; claimant filed notices of location on August 1, 1979, and affidavits of assessment on December 5, 1979; claimant received erroneous information from BLM).

Mildred McGee, 68 IBLA 292 (1982)(63 claims void; failure to file affidavits of assessment by October 22, 1979).

Douglas K. Martin, 68 IBLA 322 (1982)(8 claims void; failure to file affidavits of assessment by October 22, 1979).

Susan S. Simmons, 69 IBLA 84 (1982)(2 claims void; located in 1955; failure to file affidavits of assessment prior to October 22, 1979; proper filing in 1980 and 1981; claimant suggested the BLM lost the documents).

Charles W. Shannon, Ruth Kunkel, 69 IBLA 300 (1982)(10 claims void; failure to file affidavits of assessment by October 22, 1979; BLM had some of the group of notices submitted; claimant believes the BLM lost the files).

L.L. Anderson, 69 IBLA 304 (1982)(12 lode claims void; failure to file affidavits of assessment by October 22, 1979; proper filings in 1980 and 1981).

Dee Wright, 69 IBLA 309 (1982)(8 claims void; failure to file affidavits of assessment by October 22, 1979; claimant received incorrect information from BLM).

Estate of Woodie Nichols, 69 IBLA 382 (1983)(33 lode claims located in 1954 and 1956 void; failure to file affidavits of assessment by October 22, 1979).

Erna Jellen, Suzanne K. Marco, 70 IBLA 29 (1983)(2 lode claims void, located in 1946 and 1947; failure to file affidavits of assessment by October 22, 1979; received November 13).

Gerwin Blake Riding, 70 IBLA 59 (1983)(52 claims located from 1935 to 1976 void; failure to file affidavits of assessment by October 22, 1979; proper filings in 1980, 1981, and 1982).

Addison Girard Clark, 72 IBLA 321 (1983)(3 lode claims void; failure to record claims by October 22, 1979; BLM gave claimant erroneous information).

William E. Day, 72 IBLA 364 (1983)(17 claims void; failure to record claims by October 22, 1979; 5 families were dependent on claims).

Charles E. Bean, 73 IBLA 108 (1983)(48 lode claims void; failure to file affidavits of assessment prior to October 22, 1979).

Wayne M. Hunt, 73 IBLA 315 (1983)(14 lode claims void; failure to file affidavits of assessment by October 22, 1979).

Don Walker, 74 IBLA 153 (1983)(7 claims void; failure to file affidavits of assessment by October 22, 1979; BLM opinion incorrect, said filing due December 30, 1979; annual assessment work performed every year and evidence of work filed with BLM every year except 1979).

Page Investment Co., 74 IBLA 163 (1983)(8 claims void; failure to file affidavits of assessment by October 22, 1979).

Devon M. Hurst, 75 IBLA 149 (1983)(5 claims void; failure to file affidavits of assessment by October 22, 1979; claimant suggested the BLM lost the documents or that they were lost in the mail).

Henry G. Zacher, 77 IBLA 1 (1983)(4 claims void; failure to file proof of labor or notices of intent to hold by October 22, 1979).

APPEALS FROM BLM DECISIONS DECLARING MINING CLAIMS VOID FOR FAILURE TO FILE A COPY OF THE NOTICE OF LOCATION WITHIN NINETY DAYS OF LOCATION, PURSUANT TO THE FEDERAL LAND POLICY AND MANAGEMENT ACT, § 314(a)(2)(b) and 43 C.F.R. §§ 3833.1, 3833.4 (1982)

Southwestern Exploration Associates, 33 IBLA 240 (1977) (failure to file notices of recordation within 90 days of location; located May 4, 1977, the notices reached BLM office August 4, 1977).

Northwest Citizens for Wilderness Mining Co., Inc., 33 IBLA 317 (1978)(8 claims were located on October 23, 1976, and 4 claims were located on November 24, 1976; on December 10, 1976, the Department published proposed regulations in Federal Register; on December 29, the claimant's agent sent a letter to BLM saying "I am preparing to comply;" on January 5 the agent sent a letter asking for the proper forms and more information; on January 7 the BLM returned a letter saying that they would postpone their answer until final regulations were sent out; the claims were declared void for lack of notices of location by December 30, 1976).

Robert Thompson, 34 IBLA 319 (1978)(claimant filed 91 days after date of location).

Belton E. Hall, 35 IBLA 249 (1978)(claimant filed notices of location 5 days after 90-day period had run).

Ronald Coulam, 35 IBLA 35 (1978)(claimant filed notices of location 1 day after 90 day period had run).

Foyle Mason, 35 IBLA 40 (1978)(failure to file notice of location within 90-day period).

R. Wade Holder, 35 IBLA 169 (1978)(claimant missed 90-day period by 1 day).

G. Antolini & Son, 37 IBLA 13 (1978)(failure to file notice of intent to hold within 90 days; 4 days late).

Leland H. Bray, 37 IBLA 120 (1978)(claims located November 13, 1977, amended notices filed April 28, 1978, too late).

Al Sherman, 38 IBLA 300 (1978)(failure to file notice of location within 90 days).

Roy M. Byrum, 39 IBLA 32 (1979)(failure to file notices of intent to hold within 90 days of location).

Dale C. DeLor, 40 IBLA 88 (1979)(claim located October 23, 1976; filed notices of location on April 6, 1977).

Lawrence A. Landry, 40 IBLA 212 (1979)(claims located September 13 and 14, 1978; filed notices of location with BLM on December 26, 1978).

M. J. Reeves, 41 IBLA 92 (1979)(claims located March 24 and 25, 1978; notices of location filed at BLM on June 26, 1978).

Jim Spicer, 42 IBLA 288 (1979)(failure to file notice of location within 90 days; notice of location listed date of location as February 2, 1978; filed May 15, 1978).

John Newkirk, 42 IBLA 292 (1979)(failure to file notice of intent to hold before December 31, 1978; claimant believed the notices were lost in the mail).

William K. Moore, 44 IBLA 93 (1979)(failure to file notice of location within 90 days).

Carl Dowler, Roy Stewart, 44 IBLA 192 (1979)(failure to file notice of location within 90 days).

Raymond W. Quigley, 44 IBLA 250 (1979)(failure to file notice of location within 90 days).

Faith C. Hartman, 44 IBLA 310 (1979)(failure to file notice of location within 90 days).

P & S Mining Co., 45 IBLA 115 (1980)(failure to file notice of location within 90 days).

Beryl Rhodes, 46 IBLA 287 (1980)(failure to file notice of location within 90 days).

R. J. Holmes, 46 IBLA 316 (1980)(failure to file notice of location within 90 days).

George Toole, 47 IBLA 89 (1980)(failure to file notice of location within 90 days; claim located on June 21, 1979, BLM received notice on October 15, 1979).

Eric Murray, 47 IBLA 112 (1980)(failure to record claim within 90 days; claim located on February 9, 1979, BLM received notice on July 3, 1979; claimant is presumed to know the law).

Arthur W. Schmidt, 47 IBLA 143 (1980)(failure to record claim within 90 days; location notice said located June 11, 1979, claimant said this was a mistake, should say claim was located on October 8).

Allen J. Maxwell, Mary A. Janusz, 47 IBLA 306 (1980)(failure to file within 90 days).

Larry Lahusen, Jay Coats, 48 IBLA 43 (1980)(failure to file notice of location within 90 days; 9 days late).

Paul R. Rhodes, 48 IBLA 90 (1980)(failure to file notice of location within 90 days of date of location).

C. A. Guzeman, 48 IBLA 193 (1980)(11 lode mining claims void for failure to file notice of location within 90 days).

James White, 48 IBLA 346 (1980)(4 lode mining claims void for failure to file notice of location within 90 days).

Don R. Bird, 49 IBLA 94 (1980)(215 claims void for failure to file notices of location within 90 days; 3 days late).

Henry D. Friedman, 49 IBLA 97 (1980)(claim void for failure to file notice of location within 90 days; 5 days late although mailed 9 days earlier).

George L. Harrison, 49 IBLA 137 (1980)(9 claims void; claimant sent in sketch map, found to be insufficient; failure to record claims within 90 days even though claimant was ill).

Weldon Mead Kennedy, Elmer Devore, 49 IBLA 180 (1980)(lode mining claims void for failure to include service fees with notices of location within 90 days).

Herb Ballou, 49 IBLA 225 (1980)(4 lode claims void; failure to record claims within 90 days; claim located on December 31, 1979, BLM received copies of location notices on April 4, 1980).

Tod Anderson, 50 IBLA 66 (1980)(failure to file notice of location within 90 days).

Lee Resources Mgt. Corp., 50 IBLA 131 (1980)(failure to file notice of location within 90 days).

Arley C. Burke, 51 IBLA 224 (1980)(failure to file within 90 days).

Thomas F. Byron, Anna B. Philo, 52 IBLA 49 (1981)(failure to file notice of location within 90 days; one day late).

Jose G. Gonzales, 52 IBLA 270 (1981)(failure to file notice of location within 90 days; received in 94 days).

Robert G. and Jeanne E. R. Sunder, 52 IBLA 375 (1981) (1 claim void; failure to file notice of location within 90 days).

John C. and Theresa K. Buchanan, 52 IBLA 387 (1981) (2 claims void; failure to file notices of location within 90 days; claimant claimed notices said January 1979 when it should have said January 1980).

Michael G. Commons, 52 IBLA 396 (1981)(1 claim void; failure to file notice of location within 90 days constitutes abandonment).

James B. Pauley, 53 IBLA 1 (1981)(5 claims void; failure to file notices of location with BLM; received in 97 days; abandonment claimant filed and county recorder delayed process).

H. Mason Coggin, 54 IBLA 224 (1981)(2 claims void; claimant claimed the location notices said January 1979 when

it should have said January 1980; notices were filed in the county in 1980).

Herbert S. McClung, 55 IBLA 260 (1981)(3 claims void; failure to file copy of notices of location within 90 days; claimant suggested documents were lost in the mail).

Don E. Bates, 55 IBLA 263 (1981)(1 claim void; claim located on January 14, 1981, received by BLM on April 16, 1981; 2 days late; mailed by express mail January 19, 1981).

C. B. Shannon, 55 IBLA 312 (1981)(8 chrome quartz mining claims void; failure to file within 90 days; 3 days late; mailed within time limit).

Warren Wheeler, 56 IBLA 350 (1981)(1 claim void; failure to file notice of location within 90 days; claimant claimed mail delayed delivery of documents).

D. L. Nielson, R. W. Tompkins, 57 IBLA 114 (1981)(1 claim void; failure to file notice of location within 90 days; 2 days late).

Art Fields, Russel Adams, 57 IBLA 142 (1981)(10 claims void; failure to file notices of location within 90 days).

Richard E. and Gloria M. Naas, Michael D. and Echo Ayoob, 57 IBLA 266 (1981)(7 claims void; failure to file notices of location within 90 days).

Del Rupp, 57 IBLA 297 (1981)(1 claim void; failure to file notice of location within 90 days; 2 days late).

Sonny Champneys, 58 IBLA 29 (1981)(4 claims void; failure to file notices of location within 90 days; 2 days late; claimant was given an incorrect filing date by BLM).

Whelan's Mining and Exploration, Inc., 58 IBLA 127 (1981)(23 claims void; no notices of location filed within 90 days of location; located July 1, 3 and 10, 1980; received by BLM September 30, October 3 and 10, 1980; delay in mailing from county; filing late by 1 day).

Clayton F. Schact, 58 IBLA 137 (1981)(2 claims void for failure to file notices of location within 90 days; located August 26, 1980; received November 25, 1981; 1 day late).

Warren J. Fyten, 58 IBLA 381 (1981)(38 claims void; failure to record claims within 90 days; claims located on April 20, 1978, notices of location filed July 20, 1978).

John T. Smeaton, 59 IBLA 108 (1981)(23 claims void; failure to file notices of location within 90 days; no date on location notice, just month of September; assuming the claim was located on the last day of September, claimant still missed the deadline).

Fletcher D. Fisher, 59 IBLA 150 (1981)(2 claims void; failure to file notices of location within 90 days).

Lee Smart, 59 IBLA 235 (1981)(6 claims void; failure to file notices of location within 90 days; claim located May 16, 1979, copies tendered to the BLM on August 31, 1981; tendered before, but claims were amended so insufficient).

Phyllis J. Birchard, 59 IBLA 247 (1981)(1 claim void; failure to file notice of location within 90 days; claimant claimed the county recorder delayed filing).

Herman Black, 60 IBLA 229 (1981)(4 claims void; failure to file affidavits of assessment within 90 days).

Prudential Mining & Exploration, Inc., 60 IBLA 363 (1981)(20 claims void; failure to file notices of location within 90 days).

Bessie R. Rayne, Freddie R. Rayne, 61 IBLA 55 (1981)(1 claim void; failure to file notices of location within 90 days).

Glenn Cox, 61 IBLA 97 (1982)(5 claims void; failure to file notices of location within 90 days).

Harry Birkholz, 61 IBLA 170 (1982)(1 claim void; failure to file notice of location within 90 days; delay by county caused the late filing).

Ross Murray, 62 IBLA 7 (1982)(15 Reese Creek Iron mining claims void; failure to file notices of location within 90 days; claim located August 27, 1981; BLM received notice on December 9, 1981).

Bruce C. Kempffer, 62 IBLA 32 (1982)(4 claims void; failure to file notices of location within 90 days).

Donald C. Strong, 63 IBLA 195 (1982)(1 claim void; failure to file notice of location within 90 days; 7 days late).

Herbert A. Horton, 64 IBLA 89 (1982)(5 claims void; failure to file affidavits of assessment prior to December 31, 1979; also failure to file notices of location within 90 days; 2 days late).

George Massie, 64 IBLA 137 (1982)(1 claim void; failure to file notice of location within 90 days).

William Scott Olsen, 65 IBLA 274 (1982)(3 claims void; claims located January 10, 1981; notices of location received by BLM on March 3, 1981; payments stopped on check for service fees).

Eugene J. Curless, 67 IBLA 135 (1982)(1 claim void; failure to file notice of location within 90 days; failure to include service fee; claim located on February 3, 1982; location notice filed on April 22, 1982; fee paid on May 13).

James R. Norman, 67 IBLA 223 (1982)(1 claim void; failure to file notice of location within 90 days; claim located February 7, 1982; notice received May 24, 1982; filing delayed by county).

Amigo Mining, Inc., 68 IBLA 305 (1982)(24 claims void; location notices said claims located on January 4 or 5, 1981; notices filed with the BLM on February 25, 1982; failure to record within 90 days; claimant claimed the notices should have said claims were located in January 1982).

B. Rigby Young, 69 IBLA 88 (1982)(3 claims void; failure to file notices of location within 90 days).

Sidney A. Webb, 69 IBLA 202 (1982)(1 claim void; failure to record claim within 90 days; BLM erroneously told claimant to file claim with the state).

David F. Matuszak, 70 IBLA 11 (1983)(2 claims void; failure to record claims within 90 days; claims located July 18 and 20, 1982; BLM received notices of location on October 20, 1982; the return of recorded location notices from county office was delayed).

Dearyl Riley, 70 IBLA 33 (1983)(4 claims void; failure to record claims within 90 days; located on August 18 and 25, 1982; notices of location filed before 90 day period; BLM received location notices on November 26, 1982).

Alfred E. Malech, 72 IBLA 223 (1983)(6 lode claims void; failure to record claims within 90 days; claims recorded on 91st day at 7:36 a.m.).

Thomas C. Hall, 72 IBLA 319 (1983)(7 lode claims void; failure to record claims within 90 days; claims located on September 4, 1981, recorded on December 14, 1981; claimant was trying to clear up description problem with BLM).

Herbert Cilch, 73 IBLA 171 (1983)(4 lode claims void; failure to file notices of location within 90 days; delay of receipt due to holiday mails).

Sniffer #2 Partnership, 76 IBLA 362 (1983)(4 claims void; failure to file notices of location within 90 days; claims located on May 6, 1983; notices received August 11, 1983; delay caused by county recorder office).

Harold A. Hinkle, Michael B. Hinkle, Thomas J. Potter, 77 IBLA 152 (1983)(1 claim void; failure to file notice of location within 90 days although annual assessment work done).

APPEALS FROM BLM DECISIONS DECLARING MINING CLAIMS VOID FOR FAILURE TO PAY $5.00 SERVICE FEE FOR EACH CLAIM WITH ORIGINAL FILING PURSUANT TO 43 C.F.R. §§ 3833.1-3, 3833.4 (1982)

Irwin W. Sweeney, 34 IBLA 205 (1978)(wife filed notices of location in BLM District Office 89 days after claims were located; after the 90 day period had run the filings were found to be deficient).

Elbert O. Jensen, 39 IBLA 62 (1979)(claimant filed notices of location timely, but without required maps and service fee; claimant failed to comply within grace period).

Nevada Pacific Co., Inc., 46 IBLA 208 (1980)(1 claim void, located in 1946; BLM received notice of location on October 18, 1979, claimant did not include service fee; BLM wrote to claimant that he had 15 days to correct the deficiency, they received it on November 5; IBLA ruled that the grace period should not have been granted).

Phyllis Wood, 46 IBLA 309 (1980)(claimant acquired recording information from newspaper article which did not mention fee; claims void for failure to include service fee with recording).

L. Leon Jennings, Mansfield L. Jennings, Gilbert M. Jennings, 47 IBLA 47 (1980)(claims located on August 4, 1947; copies of notices of location filed on October 22, 1979, not accompanied by service fee; claimant argues that statute did not require fee).

R. L. Durrant, Ned Mulville, B. E. Kern, 47 IBLA 208 (1980)(7 claims located between 1942 and 1952; filings proper but without fee).

Charles P. Seel, 47 IBLA 229 (1980)(timely filing but unsigned check for service fees).

Cecil V. Clifford, Jr., 47 IBLA 262 (1980)(claimant filed timely, but failed to include service fee).

Roy Tremayne, 47 IBLA 289 (1980)(failure to include service fee with filing; also filed in wrong office).

Loyal Dee Griggs, 47 IBLA 293 (1980)(failure to include service fee with filing).

Beth Mallory, 47 IBLA 296 (1980)(failure to include service fee with filing; received filing information from news article which did not mention service fee).

David Mendenhall, 47 IBLA 298 (1980)(failure to include service fee with original filing).

Virginia Edwards, 47 IBLA 301 (1980)(failure to include service fee with original filing).

Frank Franich, 47 IBLA 332 (1980)(failure to include service fee with original filing).

Wilbur Martin, 47 IBLA 370 (1980)(failure to include service fee with original filings).

Mitsuko Flick, 48 IBLA 1 (1980)(failure to include service fee with original filings).

Lawrence Jacob, Freeda Jacob, 49 IBLA 137 (1980) (4 lode mining claims void for failure to include service fee with original filings; original filings timely).

Fleck Mining and Investment Co., 49 IBLA 187 (1980) (claims void for failure to include service fee with original filing).

Brewery Hill Mining Co. Inc., 49 IBLA 197 (1980)(8 claims void; failure to include full service fee until too late).

Darlene Y. Haymes, 49 IBLA 243 (1980)(17 claims void; location notices were filed in June 1979, with uncollectible check for service fees; claimant sent cashier's check to replace it in time, but filed no assessment affidavit because claimant received incomplete information from BLM employees).

Clifford J. Kelch, 50 IBLA 127 (1980)(failure to include service fee with original filing; sent one fee for two claims).

Gary Hansbrough, 50 IBLA 206 (1980)(failure to include service fee with original filing).

John J. Dunsmore, 51 IBLA 297 (1980)(30 claims void; check for service fees returned as uncollectible).

Robert W. Miller, Marjorie Eipper Miller, 51 IBLA 364 (1980)(failure to include service fee with original filing).

Susan Mativo, 52 IBLA 134 (1981)(4 claims void; located in 1927 and 1931; failure to include service fees with original filing).

Floyd R. Moody, 52 IBLA 153 (1981)(1 claim void; included check for service fee for only 23 out of 24 claims).

Philip I. Griner, 52 IBLA 179 (1981)(failure to file notice of location within 90 days; failure to include service fees).

Ben Martensen, Anne M. Will Halstead, 52 IBLA 253 (1981)(1 claim void; located May 3, 1980; filed notice of location on May 14, 1980; did not include service fee until after 90 day period).

Edward J. Szynkowski, Jr., 53 IBLA 310 (1981)(10 lode and placer mining claims void; failure to file copy of the notices of location; delay caused by lack of service fee).

Jesse L. Miller, 54 IBLA 187 (1981)(4 claims void; submitted postdated check for service fees; check postdated one month after submitted).

Fred W. Crozen III, 56 IBLA 318 (1981)(38 claims void; failure to file notices of location within 90 days; delay caused by failure to send service fee).

Vivian Sullivan Karlson, 60 IBLA 10 (1981)(1 claim void; failure to include service fee with filing; claim located in 1938; claimant received incomplete information from BLM).

Frank E. Evans, 60 IBLA 44 (1981)(1 claim void; failure to record claim within 90 days; claim located on June 17, 1981, recorded on August 17, 1981; on September 16, 1981 the BLM sent notice back, saying they needed the fee; at that point the 90 days had passed; BLM received it on the 98th day).

Raymond N. McCool, Harold P. Hinds, 60 IBLA 62 (1981)(1 claim void; failure to record within 90 days because of lack of service fee).

Mrs. George G. Wagner, 63 IBLA 146 (1982)(3 claims void; failure to file notices of location within 90 days; no fee included with filing).

Cajen Minerals, 64 IBLA 261 (1981)(39 claims void; claimant included service fee check which was returned uncollectible, BLM reinstated claims when check was paid; IBLA overturned this decision).

Glen W. Taylor, 67 IBLA 393 (1982)(212 claims void; claimant included check for service fee which was returned uncollectible).

Maud H. Goehring Conway, Lewis Conway, 69 IBLA 91 (1982)(57 lode claims void; check for service fees returned uncollectible past October 22, 1979).

Midas International, Inc., 69 IBLA 251 (1982)(212 lode claims void; failure to file affidavits of assessment by October 22, 1979; check for service fees uncollectible until December).

Vance W. Dighans, Leon S. Wright, 69 IBLA 394 (1983)(74 lode claims void; failure to include service fees with original filing; claimants had photocopy of check that accompanied location notices).

Horizon Exploration Co., 72 IBLA 43 (1983)(10 lode claims void; failure to include service fees with original filings).

FAILURE TO FILE NOTICE OF LOCATION WITHIN NINETY DAYS BECAUSE FILINGS WERE SENT TO THE WRONG BLM OFFICE

James F. Giancarlo, 37 IBLA 88 (1978)(claims located March 18, 1978; notices received in District Office on June 20, 1978; received in State Office June 23; 4 days late).

C. F. Linn, 45 IBLA 156 (1980)(failure to file notice of location within 90 days; filed at wrong BLM office; 1 day late).

John S. Henson, 47 IBLA 129 (1980)(claim was located in Idaho near the Montana border, with access from Montana; claimant mailed the filing to the Montana State Office, which received it on October 18, 1979; the BLM office told them they required a letter from claimant releasing them from personal liability before an employee would forward the document to the Idaho office; it was mailed on October 20, and received on October 23; void for failure to record by October 22, 1979).

John Sloan, 47 IBLA 146 (1980)(claimant mailed required documents to the district office, they were received on October 22, 1979; forwarded to state office, where they were received on October 24, 1979; claimant received information from a poster which did not say where to mail the documents; void for failure to record by October 22, 1979).

Timm Anderson, 47 IBLA 348 (1980)(failure to file within 90 days; filed in wrong office).

Interstate Brick, 49 IBLA 125 (1980)(19 claims void for failure to file notices of location by October 22, 1979; documents filed timely, but in Utah instead of Wyoming).

Interstate Brick, 50 IBLA 107 (1980)(23 claims void; filed information in wrong state office).

Richard E. Forsgren, 54 IBLA 362 (1981)(1 claim void; filed copy of notice of location in wrong office in Alaska, forwarded but received by proper office late; also failure to file affidavit of assessment).

OMCO, Inc., 55 IBLA 77 (1981)(139 claims void; failure to file affidavits of assessment by October 22, 1979 because it was filed in wrong office).

Alex Stewart, 55 IBLA 105 (1981)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980; California office told claimant to send it to Nevada office; they did so, Nevada office returned it to have serial numbers attached; returned on January 5, 1981, by then it was too late).

Donald Jardine, 58 IBLA 49 (1981)(4 claims void; failure to file notices of location within 90 days; claimant filed in Nevada instead of California BLM office; claimant received erroneous information from BLM).

Susan Bettles, 60 IBLA 75 (1981)(6 claims void; failure to file notices of location within 90 days; claimant filed in the wrong office; filed in Colorado on August 21, 1980 when it was due in Utah on October 8; Colorado BLM office returned documents to claimant on December 16).

APPEALS FROM BLM DECISIONS DECLARING MINING CLAIMS VOID FOR FAILURE TO FILE AN ASSESSMENT AFFIDAVIT OR NOTICE OF INTENT TO HOLD THE CLAIM PRIOR TO DECEMBER 31, 1978, PURSUANT TO THE FEDERAL LAND POLICY AND MANAGEMENT ACT, §§ 314(a)(1), 314(c)

Donald H. Little, 37 IBLA 1 (1978)(failure to file notice of intent to hold prior to December 31, 1977; no assessment work yet due).

Paul S. Coupey, 35 IBLA 112 (1978)(failure to file affidavit of assessment in 1977; claimant received instructions issued by BLM in January, 1977; this pamphlet contained incorrect information).

Ronald L. Norduick, 36 IBLA 238 (1978)(failure to file affidavit of assessment or notice of intent to hold prior to December 31, 1977).

Juan Munoz, 39 IBLA 72 (1979)(claimant failed to file notice of intent to hold).

Blackburn Enterprises, 41 IBLA 115 (1979)(562 claims void; failure to file affidavits of assessment or notices of intent to hold in 1978).

Nuclear Power and Energy Co. & B-2, Inc., 41 IBLA 142 (1979)(claimant failed to file affidavits of assessment work or notices of intent to hold in 1978).

Charles and Pete Caress, 41 IBLA 302 (1979)(failure to file affidavits of assessment or notices of intent to hold; claims located October 1 and 15, 1976).

Bruce Parke, 42 IBLA 18 (1979)(claims located October 10, 1977; failure to file affidavit of assessment prior to December 31, 1978).

William L. Rucinski, 42 IBLA 56 (1979)(failure to file affidavit of assessment prior to December 31, 1978; claimant filed notice of location with BLM in 1977, this triggered the affidavit filing requirement).

Clair R. Caldwell, 42 IBLA 139 (1979)(misleading information from BLM in brochure; failure to file affidavit of assessment prior to December 31, 1978).

Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979)(failure to file affidavit of assessment prior to December 31, 1978).

Donald C. Fulghum, 42 IBLA 338 (1979)(failure to file by December 30, 1978).

James V. Joyce, 42 IBLA 383 (1979)(claims located September 24, 1956; claimant filed affidavits of assessment on October 7, 1977, intending them to cover the year ending September 1, 1977; claimant filed more affidavits on October 3, 1977, intending them to cover the September 1, 1977 to September 1, 1978 assessment year; must file affidavits each calendar year).

James E. Yates, 42 IBLA 391 (1979)(failure to file notice of intent to hold or affidavit of assessment prior to December 31, 1978).

Ernest K. Lehmann & Associates, 43 IBLA 1 (1979)(failure to record claim prior to December 31, 1978).

Charlie Carnal, Walter Peck, and Edward Borzansky, 43 IBLA 10 (1979)(failure to file affidavit of assessment work prior to December 31, 1977; claims located November 22 and December 2, 1976).

Roger Kuhn, 43 IBLA 182 (1979)(failure to file affidavit of assessment or notice of intent to hold prior to December 31, 1978; claimant believed the document was lost in the mail).

Silvertip Exploration and Mining, 43 IBLA 250 (1979) (failure to file affidavit of assessment prior to December 31, 1978).

Dennis J. Mertz and Randy Mark, 43 IBLA 302 (1979) (1 claim void; failure to file affidavit of assessment prior to December 31, 1979; affidavit received January 8; claimant had sent it to wrong city).

Lester L. Rhoads, 43 IBLA 380 (1979)(claim located in 1977; failure to file affidavit of assessment prior to December 31, 1978; notice of location filed on October 10, 1977).

William A. Berry, 44 IBLA 162 (1979)(failure to file notice of intention to hold claim prior to December 31, 1978).

Velda Waters, 44 IBLA 272 (1979)(failure to file affidavit of assessment or notice of intent to hold in 1978).

Willene Minnier, 45 IBLA 1 (1980)(failure to file affidavit of assessment prior to December 31, 1978).

Jerry Cupper, 45 IBLA 215 (1980)(failure to file affidavit of assessment prior to December 31, 1978).

H. L. Smith, 46 IBLA 62 (1980)(failure to file affidavit of assessment prior to December 31, 1979).

Robert L. Steele, 46 IBLA 80 (1980)(20 claims void; failure to file affidavit of assessment prior to December 31, 1978; sent letter which was insufficient for affidavit or notice of intent to hold).

Josephine M. Barbera, 46 IBLA 298 (1980)(failure to file affidavits of assessment or notice of intent to hold prior to December 31, 1978).

Northwest Mining & Mercantile, Inc., 46 IBLA 360 (1980)(failure to file notices of intent to hold or affidavits of assessment prior to December 31, 1978; documents filed in 1979).

Lo Lo M. Cosby, 46 IBLA 363 (1980)(failure to file affidavit of assessment or notice of intent to hold prior to December 31, 1979).

Vernon M. and Barbara R. Johnson, 47 IBLA 43 (1980)(failure to file affidavit of assessment prior to December 31, 1978; claimant sent a letter to BLM on April 13, 1979, saying the claim is one of a group for which the work is being done jointly, and she sent a copy of a proof of labor for 4 claims; claims located *before* 1976 did not need filing until 1979, however, the one claim located *after* 1976 required filing earlier, in 1978).

Geomet Exploration, Inc., 47 IBLA 135 (1980)(13 claims located in 1977, claimant failed to file an affidavit of assessment prior to December 31, 1978; on October 19, 1978, it was sent to the county, and was not returned until late December so the claimant sent a copy without the book and page number from the county recording; received by BLM on January 8, 1979; claimant said they usually send someone by plane to make the filings, but could not afford to this time).

W. Verne Kight, Eva M. Kight, 47 IBLA 351 (1980)(failure to file affidavit of assessment or notice of intent to hold prior to December 31, 1978).

Gary L. Barton, J. Marinelli, R. Nixon, 47 IBLA 386 (1980)(failure to file affidavit of assessment or notice of intent to hold prior to December 31, 1978; claimant thought it was lost in the mail).

William J. Walker, Lewis Sandberg, 47 IBLA 389 (1980)(15 claims, located in 1977; no assessment work required until 1979; notice of intent to hold due prior to December 31, 1978; failure to file notice of intent to hold).

White Star Foundation, Inc., 48 IBLA 96 (1980)(4 claims void; claims located in 1977; no affidavit of assessment filed in 1978).

Betty Norton, 48 IBLA 184 (1980)(2 claims located in 1911 and 1927 void; failure to file affidavit of assessment or notice of intent to hold prior to December 31, 1978).

Don and Mary L. Clark, 49 IBLA 11 (1980)(6 claims void; failure to file affidavits of assessment in 1978; ignorance of the regulation was no excuse).

Henry H. Schmid, Judith A. Schmid, 50 IBLA 406 (1980)(failure to file affidavit of assessment prior to December 31, 1978).

Don Chris A. Coyne, 52 IBLA 1 (1981)(failure to file affidavit of assessment by December 31, 1978; filed before Christmas, post office employees assured its timely arrival).

Dale E. Henkins, 52 IBLA 9 (1981)(failure to file affidavit of assessment prior to December 31, 1978).

Glen Gould, 52 IBLA 305 (1981)(20 claims void; failure to file affidavits of assesment by December 31, 1978).

Dean Saylor, 52 IBLA 366 (1981)(failure to file affidavit of assessment prior to December 31, 1978; lost in mail).

Robert F. Wilkinson, 53 IBLA 106 (1981)(110 claims void; failure to file affidavits of assessment prior to December 31, 1978; claimant did pay service fee for each claim and submit maps covering claims).

Caroline E. Brown, 56 IBLA 334 (1981)(2 claims void; failure to file affidavits of assessment prior to December 31, 1978).

Intermountain Exploration Co., 57 IBLA 271 (1981)(3 claims void; failure to file affidavits of assessment prior to December 31, 1978; claimant filed properly in 1979, 1980, and 1981).

Intermountain Exploration Co., 57 IBLA 274 (1981) (2 claims void; failure to file affidavits of assessment prior to December 31, 1977; BLM error in procedure relevant to case considered irrelevant).

Uranus, Inc., 58 IBLA 139 (1981)(45 claims void; located in 1967 within Capital Reef National Park; copies of location notices filed with National Park Service under the Mining in the Parks Act; on January 30, 1978, the Park Service forwarded documents to BLM; location notices also filed September 28, 1977; no annual notices filed for 1978 or 1979 with National Park Service or BLM; void for failure to file notices of intent to hold with BLM prior to December 31, 1978).

A.O.S. Co., 59 IBLA 112 (1981)(201 claims void; failure to file notices of location prior to December 31, 1978).

N.L. Baroid Petroleum Services, 60 IBLA 90 (1981)(11 claims void, located in 1967; notices of location recorded on December 7, 1977; affidavits of assessment filed on December 14, 1977, and none in 1978; claimant wanted it to cover both years; must file during each calendar year).

R. C. Wilcox, 63 IBLA 19 (1982)(3 claims void; failure to file affidavits of assessment prior to December 30, 1978; claimant suggested that the BLM misfiled the documents).

Danner Mines, Inc., 63 IBLA 49 (1982)(7 claims void; failure to file affidavits of assessment prior to December 31, 1978; proper filing in 1977; plaintiff received incorrect information from BLM employee).

Robert Gilmore, 64 IBLA 295 (1982)(14 claims void; failure to file affidavits of assessment prior to December 31, 1978; claimant filed properly in 1979, 1980 and 1981).

Richard C. Davis, 65 IBLA 1 (1982)(2 claims void; failure to file affidavits of assessment prior to December 31, 1978; proper filings in 1979, 1980 and 1981).

Herschel Knapp, 65 IBLA 314 (1982)(1 claim void; failure to file affidavit of assessment prior to December 31, 1978; no assessment work due).

Harvey A. Wolcott, 65 IBLA 369 (1982)(6 claims void; failure to file affidavits of assessment prior to December 31, 1978).

Steve Kosanke, 66 IBLA 46 (1982)(10 claims void; failure to file affidavits of assessment prior to December 31, 1977; claimant sent a letter in 1977 which was insufficient for notices of intent to hold; assessment work not yet due).

Elaine Marianne McLevie, 67 IBLA 220 (1982)(1 lode claim void; failure to file affidavit of assessment prior to December 31, 1978).

Roger Ferguson, Sybil R. Ferguson, 67 IBLA 284 (1982)(1 lode claim void; failure to file affidavit of assessment prior to December 31, 1978; proper filings in 1979, 1980 and 1981).

Homestake Mining Co., 73 IBLA 117 (1983)(22 lode claims void; failure to file affidavits of assessment prior to December 31, 1978; affidavits filed properly in 1979-1982).

David R. Mathews, 74 IBLA 320 (1983)(7 claims void; failure to file affidavits of assessment prior to December 31, 1978; contends the affidavits were mailed to BLM within 2 weeks of county filing on September 6, 1978).

Gustin Corp., H.R. Casperson, 75 IBLA 100 (1983)(3 claims void; failure to file notices of intent to hold claims prior to December 31, 1978; no assessment work due until 1979).

APPEALS FROM BLM DECISIONS DECLARING MINING CLAIMS VOID FOR FAILURE TO FILE AN ASSESSMENT AFFIDAVIT OR NOTICE OF INTENT TO HOLD THE CLAIM PRIOR TO DECEMBER 31, 1979, PURSUANT TO THE FEDERAL LAND POLICY AND MANAGEMENT ACT, §§ 314(a)(1), 314(c)

B. B. Wadleigh, 44 IBLA 11 (1979)(41 claims void; failure to file affidavits of assessment prior to December 31, 1979; BLM sent two letters requesting date notice was filed in the county; claimant never answered).

Ronald Forsker, 48 IBLA 132 (1980)(4 claims located in 1978 voided; no affidavit of assessment recorded in 1979).

Anna Schalkewicz, 48 IBLA 134 (1980)(claim void for failure to file affidavit of assessment prior to December 31, 1979).

Victor De Lange, 48 IBLA 222 (1980)(3 claims void for failure to file affidavits of assessment in 1979).

Laura Mae Hopper, 48 IBLA 253 (1980)(3 lode mining claims void for failure to file affidavits of assessment prior to December 31, 1979).

Alaskamin Co., 49 IBLA 43 (1980)(360 claims void for failure to record affidavits of assessment for 1978 to 1979 assessment year).

E. M. Hart, 50 IBLA 138 (1980)(failure to file affidavit of assessment prior to December 31, 1979).

Robert R. Eisenman, 50 IBLA 145 (1980)(failure to file affidavit of assessment prior to December 31, 1979).

Zoes Associates, 50 IBLA 164 (1980)(2,018 claims void; claims located in 1978, failure to file affidavits of assessment in 1979).

Michael Jon McFarland, 51 IBLA 173 (1980)(failure to file affidavit of assessment prior to December 31, 1979).

Lowell M. Paige, 52 IBLA 137 (1981)7 claims, located in 1912, 1923, and 1930; failure to file affidavits of assessment prior to December 31, 1979; received January 3, 1980).

James C. Prebelich, 53 IBLA 34 (1981)4 claims void; failure to file affidavits of assessment prior to December 31, 1979; placer mining claim; appellant asserts he was unaware of filing requirements).

Janice Fay Ondreako, I.D. Monaghan, 53 IBLA 128 (1981)2 chromium lode claims, located in 1939 and 1963; failure to file affidavits of assessment by October 22, 1979; filed in 1980; appellants claim proofs of labor were either misplaced or lost in the mail).

Cleatus Sypult, 53 IBLA 171 (1981)2 claims void; failure to file affidavits of assessment prior to December 31, 1979; claimant mailed assessment to BLM; claimant who chooses means of delivery must bear responsibility of loss or untimely delivery).

Pacific Coast Mines, Inc., 53 IBLA 200 (1981)33 lode mining claims void; failure to file affidavits of assessment prior to December 31, 1979; appellant contends mailed and received and confirmed by telephone).

Randal Angeloni, Douglas Blixt, 54 IBLA 56 (1981)1 placer mining claim void; failure to file affidavit of assessment prior to December 31, 1979; appellants claim proof of labor mailed, no excuse when BLM does not receive).

John Richard Bodie, 54 IBLA 93 (1981)1 claim void; failure to file affidavit of assessment prior to December 31, 1979; filing in local state office does not amount to compliance).

Joseph Ojurovich, 54 IBLA 100 (1981)1 claim void; failure to file affidavit of assessment prior to December 31, 1979; appellant filed annually with Trinity County, Calif. recorder's office; does not amount to compliance).

Ernest M. Cuzzocreo, 54 IBLA 108 (1981)3 claims void; failure to file affidavits of assessment prior to December 31, 1979).

Jesse E. Minium, Jr., 54 IBLA 134 (1981)1 claim void; failure to file affidavit of assessment prior to December 31, 1979).

David Truesdell, 57 IBLA 60 (1981)2 claims void; failure to file affidavits of assessment prior to December 31, 1979; proper filings to this point).

Bart Cannon, 57 IBLA 281 (1981)1 claim void; failure to file affidavit of assessment prior to December 31, 1979; claimant claimed the document was lost in the mail).

Michael J. Meaise, 58 IBLA 35 (1981)1 claim void; failure to file affidavits of assessment prior to December 31, 1979).

W. Leroy Ewell, 58 IBLA 121 (1981)34 claims void; failure to file affidavits of assessment prior to December 31, 1979; located in 1967; claims were located in Glen Canyon National Recreation Area, under jurisdiction of the National Park Service; not required to do assessment work, but need notices of intent to hold under FLPMA by October 22, 1979).

Donald L. Hoffman, 58 IBLA 327 (1981)2 claims void; claims located in 1978; claimant failed to file affidavits of assessment prior to December 31, 1979).

Dennis Forsberg, 58 IBLA 346 (1981)5 claims void; failure to file affidavits of assessment prior to December 31, 1979; claimant attempted to file a letter of intent which was insufficient).

Elizabeth Francis, 60 IBLA 6 (1981)6 claims void; failure to file affidavits of assessment prior to December 31, 1979).

Ronald Willden, 60 IBLA 173 (1981)(7 claims void; failure to file affidavits of assessment prior to December 31, 1979; claimant sent an insufficient letter of intent in 1979, then filed affidavits of assessment for September 1979 to September 1980 assessment year on December 17, 1979).

Robert Wright, 61 IBLA 158 (1982)(2 claims void; failure to file affidavits of assessment prior to December 31, 1979).

Kay M. Krebs, 62 IBLA 84 (1982)(1 claim void; failure to file affidavit of assessment prior to December 31, 1979; proper filing in 1980).

Virginia White, 62 IBLA 215 (1982)(2 claims void; failure to file affidavits of assessment prior to December 31, 1979).

Floren Klopfenstein, 62 IBLA 238 (1982)(20 claims void; failure to file affidavits of assessment prior to December 31, 1979).

R. Gail Tibbetts, 62 IBLA 252 (1982)(279 claims void; failure to file notices of intent to hold prior to December 31, 1979; no assessment work yet due).

Gold Reserve Mining, Inc., 63 IBLA 266 (1982)(136 claims void; failure to file affidavits of assessment prior to December 31, 1979; no assessment work yet due under Mining in the Parks Act, 16 U.S.C. § 1907 (1976), so claimant believed that FLPMA was inapplicable).

Elkins Real Estate, 64 IBLA 141 (1982)(131 claims void; failure to file affidavits of assessment prior to December 31, 1981; claimant filed insufficiently in 1979 also).

W. A. Shepherd, Viola M. Shepherd, 65 IBLA 72 (1982)(2 claims void; failure to file affidavits of assessment prior to December 31, 1979).

J. Barry Van Hoogen, 65 IBLA 175 (1982)(6 claims void; failure to file affidavits of assessment prior to December 31, 1979; claimant prevented from doing assessment work by threats of bodily harm).

Peter Lacsay, 65 IBLA 291 (1982)(5 lode claims void; failure to file affidavits of assessment prior to December 31, 1979; affidavits complete except for missing names).

Oregon Portland Cement Co., 66 IBLA 204 (1982)(40 claims void; failure to file affidavits of assessment prior to December 31, 1979).

Robert E. Bauer, 75 IBLA 62 (1983)(2 claims void; failure to file affidavits of assessment prior to December 31, 1979).

Henry A. Hall, Barbara Hall, 75 IBLA 339 (1983)(1 lode claim void; failure to file affidavit of assessment prior to December 31, 1979).

L. C. Carter, 76 IBLA 90 (1983)(26 claims void; failure to file affidavits of assessment prior to December 31, 1979).

Charles Mayo, Marie G. Mayo, 76 IBLA 107 (1983)(3 claims void; failure to file affidavits of assessment prior to December 31, 1979; claimant received erroneous information from the BLM; assessment work had been performed on claims since their location in 1906).

APPEALS FROM BLM DECISIONS DECLARING MINING CLAIMS VOID FOR FAILURE TO FILE AN ASSESSMENT AFFIDAVIT OR NOTICE OF INTENT TO HOLD THE CLAIM PRIOR TO DECEMBER 31, 1980, PURSUANT TO THE FEDERAL LAND POLICY AND MANAGEMENT ACT, §§ 314(a)(1), 314(c)

Michael Hauger, 52 IBLA 129 (1981)(1 claim void, located in 1933; failure to file affidavit of assessment prior to December 31, 1980).

James Watkins, 54 IBLA 54 (1981)(12 claims void; failure to file affidavits of assessment prior to December 31, 1980; BLM received documents on January 2, 1981; believed he had until December 31; mailed express mail December 30).

Mascot Silver-Lead Mines, Inc., 54 IBLA 121 (1981)(6 quartz claims void; failure to file affidavits of assessment prior to December 31, 1980; received January 2; mailed on December 29; appellant contends all other agencies accept date of postmark as critical date).

William I. Schindler, 54 IBLA 221 (1981)(5 claims void; failure to file affidavits of assessment prior to December 31, 1980; received January 5; lack of knowledge of regulations, no excuse).

William M. Hand, 54 IBLA 303 (1981)(3 claims void; failure to file affidavits of assessment prior to December 31, 1980; received January 4; confusion as to filing date; relied on BLM representation).

Eugene E. Daugherty, 54 IBLA 352 (1981)(2 lode mining claims void; failure to file affidavits of assessment prior to December 31, 1980).

Earl Kremiller, 55 IBLA 28 (1981)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980; received January 2; over 8 year period claimant owned claim, submissions with postmark of due date always accepted).

Glenn D. Graham, Lynn L. Graham, 55 IBLA 39 (1981)(2 claims void; failure to file affidavits of assessment prior to December 31, 1980; received January 7).

Joe Benham, 55 IBLA 45 (1981)(6 claims void; failure to file affidavits of assessment prior to December 31, 1980).

Doris McFall, Donald Duncan, Clarence Duncan, 55 IBLA 110 (1981)(8 claims void; failure to file affidavits of assessment prior to December 31, 1980; received January 2; appellant assumed date of mailing controlling).

Jack H. Wheatley, 55 IBLA 145 (1981)(6 claims void, located in 1955; failure to file affidavits of assessment prior to December 31, 1980; affidavits received by BLM January 2, 1981; mailed special delivery December 29).

James K. Pope, 55 IBLA 148 (1981)(7 claims void; failure to file affidavits of assessment prior to December 31, 1980; three days late; mail delayed through no fault of sender; holiday rush).

GSA Reserve Corp., 55 IBLA 162 (1981)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980; notice of intent to hold received January 2, 1981; affidavit of assessment received January 5, 1981; mailing before due date held not sufficient to comply).

Richard E. Dumas, 55 IBLA 382 (1981)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980).

Charles M. Lowe, 55 IBLA 384 (1981)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980).

Melvin and Bernice Darby, 56 IBLA 41 (1981)(8 claims void; failure to file affidavits of assessment prior to December 31, 1980; one day late; proof of labor for prior assessment year had been timely submitted).

Jerald D. Ledbetter, 56 IBLA 84 (1981)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980).

King of the Hills Mining Co., 56 IBLA 51 (1981)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980).

Gary M. Greenlaw, Ronald D. Sharp, 56 IBLA 109 (1981)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980; filed timely to this point).

Ken Alexander, 56 IBLA 129 (1981)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980).

George I. Lakich, 56 IBLA 148 (1981)(3 claims void, located in 1932 and 1950; failure to file affidavits of assessment prior to December 31, 1980; received January 6; mailed December 29).

Lyle I. Thompson, 56 IBLA 155 (1981)(8 claims void; failure to file affidavits of assessment prior to December 31, 1980; received by BLM on January 2; mailed December 29).

Stephen G. Rudisill, Evelyn J. Rudisill, 56 IBLA 158 (1981)(1 lode mining claim void; failure to file affidavit of assessment prior to December 31, 1980).

Louise P. Shultis, 56 IBLA 163 (1981)(2 claims void; failure to file affidavits of assessment prior to December 31, 1980).

Robert B. Melcher, 56 IBLA 165 (1981)(3 claims void; failure to file affidavits of assessment prior to December 31, 1980; claimant claims he mailed the documents in October of 1980).

Dennis A. Lane, 56 IBLA 171 (1981)(3 claims void; failure to file affidavits of assessment prior to December 31, 1980; claimant claimed he mailed the documents in August of 1980).

Jacqueline A. Riddlemoser, 56 IBLA 173 (1981)(3 claims void; failure to file affidavits of assessment prior to December 31, 1980; received by BLM on January 6; mailed December 23, 1980).

John R. Dazies, 56 IBLA 175 (1981)(2 claims void; failure to file affidavits of assessment prior to December 30, 1980; claimant claimed he sent documents in November of 1980).

Edward McNally, Merrill Porter, 56 IBLA 177 (1981)(10 claims void; failure to file affidavits of assessment prior to December 31, 1980; claimant claimed he sent documents in October of 1980).

Mi-Ore Mining Co., 56 IBLA 179 (1981)(22 claims void; failure to file affidavits of assessment prior to December 31, 1980; mailed by September 1980).

Roland Marshall, 56 IBLA 187 (1981)(18 claims void; failure to file affidavits of assessment prior to December 31, 1980; claimant claims BLM lost documents).

William O. Bubny, 56 IBLA 190 (1981)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980; mailed December 31, received January 2).

William T. Best, 56 IBLA 234 (1981)(6 claims void; failure to file affidavits of assessment prior to December 31, 1980; mailed December 29, 1980).

Harwell Mining Co., Wilford F. Montgomery, 56 IBLA 236 (1981)(6 claims void; failure to file affidavits of assessment prior to December 31, 1980; claimants sent some documents, but not those necessary for all claims).

The Estate of Kenneth D. Stahl, 56 IBLA 270 (1981)(1 claim void; failure to file prior to December 31, 1980; due to the death of her husband and the probate of his estate, evidence of assessment work not filed with BLM).

Valiant Resources, Inc., 56 IBLA 278 (1981)(144 claims void; failure to file affidavits of assessment prior to December 31, 1980; BLM received filing on January 2; delay in mail from bad weather in Anchorage).

Allen Turner, 56 IBLA 280 (1981)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980).

Timothy Edward Montz, 56 IBLA 315 (1981)(5 claims void; failure to file affidavits of assessment prior to December 31, 1980; claims located between 1945 and 1962; filed timely to this point).

Fairmont Oil Corp., 56 IBLA 321 (1981)(9 claims void; failure to file affidavits of assessment prior to December 31, 1980; claimant filed for rest of group of 99 claims; inadvertently left out reference to these 9; work had been performed on these 9 claims).

Andrew Kasamis, 56 IBLA 332 (1981)(3 claims void; failure to file affidavits of assessment prior to December 31, 1980; asserted that proofs of labor were sent to BLM).

Ted Dibbley, 56 IBLA 337 (1981)(16 claims void; claimant filed insufficient notices of intent to hold prior to December 31, 1980).

John E. Urban, 56 IBLA 343 (1981)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980).

Loren Nelson, 56 IBLA 352 (1981)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980).

Donald E. Black, 56 IBLA 354 (1981)(1 claim void; located in 1952; failure to file affidavit of assessment prior to December 31, 1980; timely filings to this point).

Ibis Art Foundation, 56 IBLA 357 (1981)(36 claims void; failure to file affidavits of assessment prior to December 31, 1980; county clerk said they would forward documents to BLM).

Shannon N. Thornton, 56 IBLA 359 (1981)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980; presumed previous owner of claim had made a proper filing with BLM).

Estate of Mary B. Ritchie, 56 IBLA 361 (1981)(37 claims void; failure to file affidavits of assessment prior to December 31, 1980; claimant located between 1955 and 1963).

Jerome F. Brown, 56 IBLA 364 (1981)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980; presumed previous owner of claim had made a proper filing).

Robert W. Soehner, 56 IBLA 370 (1981)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980; claimant claimed documents were lost in the mail; mailed in November, 1980).

Regina McMahon, 56 IBLA 372 (1981)(5 claims void; failure to file affidavits of assessment prior to December 31, 1980; received by BLM at 9:13 a.m. on December 31, 1980; mailed special delivery on December 29, 1980).

Edith Gion, 56 IBLA 375 (1981)(2 claims void; failure to file affidavits of assessment prior to December 31, 1980; timely filings to this point).

Jack Terwilliger, 56 IBLA 383 (1981)(2 claims void; failure to file affidavits of assessment prior to December 31, 1980; claimant claimed documents were mailed in October 1980, and were lost in the mail).

Lela J. Fillmore, 56 IBLA 385 (1981)(1 claim void; failure to file affidavits of assessment prior to December 31, 1980; claim located in 1929; proper filings to this point).

Dave R. Newman, 57 IBLA 23 (1981)(27 claims void; failure to file affidavits of assessment prior to December 31, 1980; received by BLM on January 5; mailed December 30, 1980; work done on claims for 30 years).

Howard F. Houser, 57 IBLA 27 (1981)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980).

William J. Kroetch, 57 IBLA 29 (1981)(6 claims void; failure to file affidavits of assessment prior to December 31, 1980; claimant claimed documents were lost in the mail; allegedly mailed September 15, 1980).

M.D.C., Inc., 57 IBLA 35 (1981)(34 claims void; failure to file affidavits of assessment prior to December 31, 1980; claimant flew in to file claims; plane misdirected; claimant arrived after office hours on December 30).

Robert P. Wilson, 57 IBLA 40 (1981)(48 claims void; failure to file affidavits of assessment prior to December 31, 1980).

C.O.G.S., Inc., 57 IBLA 128 (1981)(12 claims void; failure to file affidavits of assessment prior to December 31, 1980; proper filings to this point).

Roy Rowe, 57 IBLA 136 (1981)(3 claims void; failure to file affidavits of assessment prior to December 31, 1980; on December 29, 1980, claimant sent a note to the BLM saying, "to re-record").

Shirley Thompson, Duane R. Thompson, 57 IBLA 154 (1981)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980).

John R. Erickson, 57 IBLA 157 (1981)(2 claims void; failure to file affidavits of assessment prior to December 31, 1980).

George H. Andrews, 57 IBLA 221 (1981)(23 claims void; failure to file affidavits of assessment prior to December 31, 1980; received by BLM on January 2; claims located in 1920).

Polar Resources, Co., 57 IBLA 237 (1981)(174 claims void; claimants sent a telegram to replace notices of intent to hold; received by BLM on December 31, 1980).

L. Grace Wadsworth, 57 IBLA 242 (1981)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980).

Magdalene Pickering Franklin, 57 IBLA 244 (1981) (2 claims void; failure to file affidavits of assessment prior to December 31, 1980; claimant claimed the documents were lost in the mail).

Nelson C. Barry, 57 IBLA 268 (1981)(5 claims void; failure to file affidavits of assessment prior to December 31, 1980).

Rodney N. Cates, 57 IBLA 276 (1981)(6 claims void; failure to file affidavits of assessment prior to December 31, 1980).

George W. Vruble, 57 IBLA 330 (1981)(6 claims void; failure to file affidavits of assessment prior to December 31, 1980; because city recorder's office failed to send claimant his copy in time is inexcusable).

L. M. Fern, 57 IBLA 339 (1981)(13 claims void; failure to file affidavits of assessment prior to December 31, 1980; claims were located in 1913 to 1942).

Kathy Shaner, 57 IBLA 349 (1981)(2 claims void; failure to file affidavits of assessment prior to December 31, 1980).

Vernon Bradley, 57 IBLA 351 (1981)(18 claims void; failure to file affidavits of assessment prior to December 31, 1980; received by BLM on January 2; claimant died on January 2, 1981).

Bonnie L. Chafe, 57 IBLA 384 (1981)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980; claimant claimed the document was lost in the mail).

Philip Cramer, 57 IBLA 386 (1981)(11 claims void; failure to file affidavits of assessment prior to December 31, 1980; possible loss in mail irrelevant; risk assumed by claimant).

Virgie Dowler, 57 IBLA 389 (1981)(22 claims void; failure to file affidavits of assessment prior to December 31, 1980; proper filing to this point).

Virginia M. Johnston, 57 IBLA 392 (1981)(failure to file affidavit of assessment prior to December 31, 1980; received by BLM on January 19).

Keith R. O'Hara, 58 IBLA 59 (1981)(3 claims void; failure to file affidavits of assessments prior to December 31, 1980).

John T. Motes, Marie Motes, 58 IBLA 62 (1981)(1 claim void; failure to file affidavits of assessment prior to December 31, 1980).

Kathryn Mackenzie, 58 IBLA 64 (1981)(5 claims void, located in the 1940's; failure to file affidavits of assessment prior to December 31, 1980 because of illness in the family).

Polar Resources Co., 58 IBLA 70 (1981)(481 claims void; failure to file affidavits of assessment prior to December 31, 1980; claimant sent a telegram, received on December 31, insufficient for a notice of intent to hold).

Lynne Dahle, 58 IBLA 73 (1981)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980; late appeal dismissed).

J. G. Womack, 58 IBLA 85 (1981)(11 claims void; failure to file affidavits of assessment prior to December 31, 1980; 9 claims — void for not on lands open to location. 2 claims — no affidavits of assessment).

Fahey Group Mines, Inc., 58 IBLA 88 (1981)(18 claims void; amended locations 1934; failure to file affidavits of assessment prior to December 31, 1980).

James K. Daily, 58 IBLA 134 (1981)(4 lode mining claims; void for failure to file affidavits of assessment by December 30, 1980).

Albert Fouche, James Ulberg, 58 IBLA 230 (1981)(2 claims void; located August 14, 1979; recorded October 30, 1979; on January 19, 1981, the BLM received proof of labor for the 1980 assessment year, too late).

Jack McCarley, 58 IBLA 239 (1981)(1 claim void; failure to file affidavits of assessment prior to December 31, 1980; claimant submitted proofs of labor for 1977 and 1978; BLM opinion said affidavits were required by December 30, should be October 22).

Michael J. Fabisiak, 58 IBLA 243 (1981)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980; claim located October 13, 1979; recorded October 19, 1979; received affidavit of assessment for 1980 year on January 2, 1981—three days late).

Guy A. Matthews, 58 IBLA 246 (1981)(10 claims void; failure to file affidavits of assessment prior to December 31, 1980; proper filings in 1979).

Mrs. Walter E. Bolles, 58 IBLA 25?. 981)(1 claim void; claimant's family has held claim since . 925; failure to file affidavit of assessment prior to December 31, 1980; proper filings in 1979).

Richard W. Thom, 58 IBLA 291 (1981)(24 claims void; failure to file affidavits of assessment prior to December 31, 1980 although claimant has actively worked claims since they were located).

John R. Kuhn, 58 IBLA 316 (1981)(6 claims void; failure to file affidavits of assessment prior to December 31, 1980; proper filing in 1979).

Rupert Thorne, 58 IBLA 319 (1981)(58 claims void; claimant filed affidavits of assessment for assessment year ending in September 1980 on October 22, 1979; claimant failed to file affidavits during 1980 calendar year).

Lee R. Newsom, 58 IBLA 325 (1981)(4 claims void; failure to file affidavits of assessment prior to December 31, 1980; affidavits filed December 31).

Eugene M. Goatcher, 58 IBLA 337 (1981)(2 claims void; failure to file affidavits of assessment prior to December 31, 1980).

Conoco, Inc., 58 IBLA 390 (1981)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980; claim located in 1915; claimant believed FLPMA did not apply because the claim fell under the Mineral Leasing Act of 1920; IBLA declared that FLPMA still applies).

John Eversheff, 58 IBLA 403 (1981)3 claims void; claimant filed notices of location of October 4, 1979; no affidavits of assessment filed until December 30, 1980; claimant suggests the affidavits were lost in the mail).

Joe L. Watts, 59 IBLA 127 (1981)16 claims void; failure to file affidavits of assessment prior to December 31, 1980; affidavits received on January 2; claimant received erroneous information from BLM employee).

Don G. Gilbertson, 59 IBLA 143 (1981)17 claims void; failure to file affidavits of assessment prior to December 31, 1980).

Teddy W. Morgan, 59 IBLA 153 (1981)7 claims void; failure to file affidavits of assessment prior to December 31, 1980; 1 day late).

George E. Casler, 59 IBLA 189 (1981)31 claims void; failure to file affidavits of assessment prior to December 31, 1980; proper filing in 1979).

Louis E. Sharp, 59 IBLA 223 (1981)7 claims void; failure to file affidavits of assessment prior to December 31, 1980; claimant suggests the affidavits were delayed in the mail).

Roy R. Smalley, 59 IBLA 238 (1981)1 claim void; on April 18, 1976, BLM received amended notice of location, then they requested and received the original; affidavit of assessment for 1980 not received until December 31, 1 day late).

Inez Crews, 59 IBLA 257 (1981)24 claims void; failure to file affidavits of assessment prior to December 31, 1980; received on January 2).

James W. Cole, 59 IBLA 280 (1981)30 claims void; failure to file affidavits of assessment prior to December 31, 1980; documents postmarked December 31, received January 5).

H. J. Rodabaugh, 59 IBLA 286 (1981)1 claim void; failure to file affidavit of assessment prior to December 31, 1980; claimant was in an accident; guardian filed property in 1981).

Anton J. Meyer, 59 IBLA 311 (1981)2 claims void; failure to file affidavits of assessment prior to December 31, 1980).

Helmut Laur, Arthur J. DeVine, 59 IBLA 316 (1981)5 claims void; failure to file affidavits of assessment prior to December 31, 1980; 4 claims were over 50 years old, one located in 1954).

Lloyd J. Osborn, P.G.C.S., Ltd., 59 IBLA 323 (1981)10 claims void; failure to file affidavits of assessment prior to December 31, 1980; claims recorded on October 9, 1979; claimant claims the affidavits were lost in the mail).

William Cooper, 60 IBLA 50 (1981)1 claim void; failure to file affidavit of assessment prior to December 31, 1980).

Lawrence S. McLean, 60 IBLA 65 (1981)4 claims void; failure to file affidavits of assessment prior to December 31, 1980; claims located in 1882, 1887 and 1930; proper filing to this point).

James G. Robinson, 60 IBLA 134 (1981)16 claims void; failure to file affidavits of assessment prior to December 31, 1980; claimant suggested the BLM lost the document).

Lee R. Heath, 60 IBLA 171 (1981)2 claims void; failure to file affidavits of assessment prior to December 31, 1980; proper filings to this point).

Ronald M. Guntert, Marion G. Guntert, 60 IBLA 200 (1981)26 claims void; failure to file affidavits of assessment prior to December 31, 1980; claimant received incomplete information from the BLM; claimants spent $10,000 on claim in 1980 and $500,000 over all).

Jack and Lisa Silbaugh, William E. Dorn, 60 IBLA 217 (1981)28 claims void; failure to file affidavits of assessment prior to December 31, 1980; received on December 31; severe blizzard in Anchorage delayed mail).

Edwin Striegel, Marie A. O'Brien, 60 IBLA 232 (1981)(3 claims void; failure to file affidavits of assessment prior to December 31, 1980).

Don Cook, 60 IBLA 255 (1981)(4 placer claims void; failure to file affidavits of assessment prior to December 31, 1980).

Bruce R. Berringer, 60 IBLA 258 (1981)(10 claims void; failure to file affidavits of assessment prior to December 31, 1980; claimant claims the document was lost in the mail).

Major G. Atkins, 60 IBLA 284 (1981)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980; claim located in 1947; proper filing to this point).

Northern Stone Supply, 61 IBLA 36 (1981)(13 claims void; failure to file affidavits of assessment prior to December 31, 1980; proper filings to this point).

Golden Nonesuch Mining Corp., 61 IBLA 120 (1982)(98 claims void; failure to file affidavits of assessment prior to December 31, 1981; affidavits received by BLM on January 5, 1982; claimant suggests the documents were delayed in the mail).

Philip W. Lyttle, 61 IBLA 161 (1982)(12 lode claims void; failure to file affidavits of assessment prior to December 31, 1980; received January 2, 1981).

Jayne A. McHargue, 61 IBLA 163 (1982)(2 claims void; failure to file affidavits of assessment prior to December 31, 1980; claims located in 1940; proper filing to this point).

Dale I. Patchen, Guy W. Patchen, 61 IBLA 185 (1982)(21 claims void; failure to file affidavits of assessment prior to December 31, 1980; claims located from 1947 to 1964; claimant received incomplete information from the BLM).

Ned Schaaf, 61 IBLA 323 (1982)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980; received by BLM on January 2).

Denver N. Tallman, 61 IBLA 326 (1982)(12 claims void; failure to file affidavits of assessment prior to December 31, 1980; proper filings to this point).

Ronald R. Atkins, 61 IBLA 364 (1982)(2 claims void; failure to file affidavits of assessment prior to December 31, 1980).

David and Riordon Doremus, 61 IBLA 367 (1982)(2 claims void; failure to file affidavits of assessment prior to December 31, 1980).

Esther M. Moore, 61 IBLA 391 (1982)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980; claim located in 1954).

Jim W. Koonce, 62 IBLA 9 (1982)(7 claims void; failure to file affidavits of assessment prior to December 31, 1980; claim held by family since 1935).

Russel L. Osborn, 62 IBLA 104 (1982)(64 claims void; failure to file affidavits of assessment prior to December 31, 1980; appeal dismissed).

Douglas Lee Jones, 62 IBLA 107 (1982)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980).

W. E. Matheson, 62 IBLA 303 (1982)(4 claims void; failure to file affidavits of assessment prior to December 31, 1980; claims located in 1956 and 1967; proper filing to 1979).

Douglas M. Overmoe, 62 IBLA 307 (1982)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980; claim located and recorded in December 1979).

Robert L. Race, 63 IBLA 1 (1982)(3 claims void; failure to file affidavits of assessment prior to December 31, 1980; proper filing in 1979; claims located in 1954 and 1962).

Calaho Mining Co., 63 IBLA 5 (1982)(11 claims void; failure to file affidavits of assessment prior to December 31, 1980; claims located in 1939 and 1952).

Old Hundred Gold Mining Co., 63 IBLA 56 (1982)(12 claims void; failure to file affidavits of assessment prior to December 31, 1980).

Erickson Placers, Inc., 63 IBLA 60 (1982)(13 claims void; failure to file affidavits of assessment prior to December 31, 1980; claimant filed 2 affidavits in 1979; claims were located in 1952; filings required every year).

Carl W. St. Claire, 63 IBLA 125 (1982)(9 claims void; failure to file affidavits of assessment prior to December 31, 1980; received by BLM on January 2, 1981).

Copper Camp Consolidated Mines, Inc., 63 IBLA 203 (1982)(44 claims void; failure to file affidavits of assessment prior to December 31, 1980; proper filing in 1979).

Tako Mining, 63 IBLA 206 (1982)(9 claims void; failure to file affidavits of assessment prior to December 31, 1980; received by BLM on January 2).

Francis Shaw, 63 IBLA 235 (1982)(15 claims void; failure to file affidavits of assessment prior to December 31, 1980; appeal dismissed).

Lawrence Paul, 63 IBLA 275 (1982)(5 claims void; failure to file affidavits of assessment prior to December 31, 1980; claims located between 1931 and 1965).

Lloyd J. Osborn, 64 IBLA 21 (1982)(4 claims void; failure to file affidavits of assessment prior to December 31, 1980; claims located in 1944).

Robert J. Verchota, 64 IBLA 23 (1982)(4 claims void; failure to file affidavits of assessment prior to December 31, 1980; claimant suggests that the BLM lost the affidavits; claims located in 1967).

Vester Marier, 64 IBLA 90 (1982)(1 claim void; failure to file affidavits of assessment prior to December 31, 1980; received by BLM on January 6 and January 7, 1981; proper filing in 1979).

Great West Land & Mining Corp., 64 IBLA 114 (1982)(120 claims void; failure to file affidavits of assessment prior to December 31, 1980; filings received by BLM on January 5, 1981; claimants sent a letter earlier in 1980 which was insufficient; failure to file notices of location within 90 days).

Cora Lee Jensen-Gore, 64 IBLA 271 (1982)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980; received by BLM on December 31; claim located in 1946).

Marvin E. Nukala, 64 IBLA 313 (1982)(2 claims void; failure to file affidavits of assessment prior to December 31, 1980; claimant received erroneous information from BLM employee).

Betty Smith, 64 IBLA 395 (1982)(6 claims void; failure to file affidavits of assessment prior to December 31, 1980; claimant suggested that affidavits were lost in the mail).

Kenneth L. Wilbur, 65 IBLA 4 (1982)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980).

Harold L. Michaelson, 65 IBLA 6 (1982) 1 claim void; failure to file affidavit of assessment prior to December 31, 1980; claimant suggested that affidavit was lost in the mail).

Charles E. Hull, 65 IBLA 61 (1982)(27 claims void; failure to file affidavits of assessment prior to December 31, 1980; claims located in 1950 and 1955).

Charles L. Roberts, 65 IBLA 67 (1982)(1 claim void, located in 1974; failure to file affidavit of assessment prior to December 31, 1980).

Howard E. Thompson, 65 IBLA 79 (1982)(failure to file affidavit of assessment prior to December 31, 1980).

Edwin P. Keegan, Jr., 65 IBLA 114 (1982)(4 claims void, located in 1955; failure to file affidavits of assessment prior to December 31, 1980; proper filing in 1981; claimant suggested BLM lost the affidavit).

Gladys M. Cramer, 65 IBLA 129 (1982)(4 claims void; failure to file affidavits of assessment prior to December 31, 1980; claimant suggested the documents were lost in the mail).

Madison D. Locke, 65 IBLA 122 (1982)(11 claims void; claims located in 1952 and 1955; failure to file affidavits of assessment prior to December 31, 1980; claimant received incorrect information from BLM employees).

Don C. Tracy, Gordon C. Tracy, 65 IBLA 160 (1982)(14 claims void; failure to file affidavits of assessment prior to December 31, 1980).

Fawn Rapp, 65 IBLA 277 (1982)(32 claims void; failure to file affidavits of assessment prior to December 31, 1980).

Helena Silver Mines, Inc., 65 IBLA 287 (1982)(40 claims void; failure to file affidavits of assessment prior to December 31, 1980; claimant believed the BLM lost the documents).

J & B Mining Co., Inc., 65 IBLA 335 (1982)(2 claims void; failure to file affidavits of assessment prior to December 31, 1980).

Viola Peck Whitney, 65 IBLA 361 (1982)(2 lode claims void, located in 1939; failure to file affidavits of assessment prior to December 31, 1980; claimant received incorrect information from BLM employees).

Olive M. Stirland, 65 IBLA 363 (1982)(19 claim void; failure to file affidavit of assessment prior to December 31, 1980; claim located in 1923).

Victor Hegstead, 66 IBLA 31 (1982)(5 claims void; claims located in 1902 and 1919; failure to file affidavits of assessment prior to December 31, 1980; proper filings to this point).

Donald Klein, Mozelle Klein, 66 IBLA 212 (1982)(4 lode claims void; failure to file affidavits of assessment prior to December 31, 1980; claimant sent a letter, which was insufficient for notices of intent to hold).

Carl Kirkenhofer, 66 IBLA 226 (1982)(1 lode claim void; failure to file affidavit of assessment prior to December 31, 1980, although claimant said the affidavit was filed).

Keith E. Ferrell, 67 IBLA 101 (1982)(2 claims void; failure to file affidavits of assessment prior to December 31, 1980; claimant received erroneous information from BLM).

Robert Brennan, 67 IBLA 218 (1982)(1 lode claim void; claim located in 1956; failure to file affidavit of assessment prior to December 31, 1980).

B. Rigby Young, 68 IBLA 397 (1982)(2 claims void; failure to file affidavits of assessment prior to December 31, 1980; claimant sent a letter of intent which was insufficient).

Phil E. Parks, 69 IBLA 65 (1982)(3 claims void; failure to file affidavits of assessment prior to December 31, 1980; also no filing in 1981).

Klondex Gold & Silver Mining Co., 69 IBLA 247 (1982)(16 lode claims void; failure to file affidavits of assessment prior to December 31, 1980; claims were being actively worked and developed).

Mineral Investigation and Development Co., 71 IBLA 398 (1983)(23 lode claims void; failure to file affidavits of assessment prior to December 31, 1980; BLM failed to give claimant the serial numbers of the claims in time for them to be included with the documents).

Robert J. King, L.K. Hollenbeck, 72 IBLA 75 (1983)(1 claim located in 1894 void; failure to file affidavit of assessment prior to December 31, 1980).

Wilbur R. Parsons, 73 IBLA 6 (1983)(2 claims void; failure to file affidavit of assessment prior to December 31, 1980).

Norma H. Campbell, 73 IBLA 390 (1983)(8 claims void; failure to file affidavits of assessment prior to December 31, 1980; sent proper filings for some claims).

Shirley Pomeroske, 74 IBLA 210 (1983)(10 claims void; failure to file affidavits of assessment prior to December 31, 1980).

Hughes Minerals, Inc., 74 IBLA 217 (1983)(9 claims void; failure to file affidavits of assessment prior to December 31, 1980; appellant contends copies of such proof of labor transmitted timely to BLM).

Frank Bongus, 74 IBLA 307 (1983)(13 claims void; failure to file affidavits of assessment prior to December 31, 1980).

Paul T. Ryan, Melvin V. Lunt, 75 IBLA 76 (1983)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980; claimants did not file proof of labor because they had never been informed that their claim was approved).

Shamrock Mining Inc., 75 IBLA 110 (1983)(10 claims void; failure to file affidavits of assessment prior to December 31, 1980; claimant suggested the documents were lost in the mail; letter mailed September 26, 1980).

John Dillingham, Mabel Dillingham, 75 IBLA 146 (1983)(6 claims void; failure to file affidavits of assessment prior to December 31, 1980; lessee wrongfully represented that he had complied with all federal requirements).

Homer Owens, 75 IBLA 335 (1983)(3 claims void; failure to file affidavits of assessment prior to December 31, 1980; claimant suggested the BLM lost the documents).

James Cuoco, 76 IBLA 96 (1983)(1 claim void; failure to file affidavit of assessment prior to December 31, 1980; employee of claimant failed to keep paper work current).

Farrell D. Cluxto, 76 IBLA 180 (1983)(5 claims void; failure to file affidavits of assessment prior to December 31, 1980).

Betty E. Baxter, 76 IBLA 188 (1983)(2 claims void; failure to file affidavits of assessment prior to December 31, 1980; claimant suggested the BLM lost file after she received notices to file a proof of labor for 1981).

APPEALS FROM BLM DECISIONS DECLARING MINING CLAIMS VOID FOR FAILURE TO FILE AN ASSESSMENT AFFIDAVIT OR NOTICE OF INTENT TO HOLD THE CLAIM PRIOR TO DECEMBER 31, 1981, PURSUANT TO THE FEDERAL LAND POLICY AND MANAGEMENT ACT, §§ 314(a)(1), 314(c).

Elmer F. Brewster, Steve Foster, 63 IBLA 51 (1982)(8 claims void; failure to file affidavits of assessment prior to December 31, 1981; claimant mailed the document on December 26, it was received by the BLM on January 4).

Lynn Day, 63 IBLA 70 (1982)(57 claims void; failure to file affidavits of assessment prior to December 31, 1981; proper filing in 1980; Utah law allows a year and a fraction to file evidence of assessment work done on the claims).

T. Richard Ihard, 63 IBLA 200 (1982)(1 claim void; failure to file affidavit of assessment prior to December 31, 1981; document received by BLM on December 31).

Charles A. Behney, III, 63 IBLA 231 (1982)(1 claim void; failure to file affidavit of assessment prior to December 31, 1981; received December 31).

R. L. Pate, Sr., 63 IBLA 233 (1982)(1 claim void; failure to file affidavit of assessment prior to December 31, 1981; mailed on December 30, received December 31).

John E. Keogh, 64 IBLA 101 (1982)(9 claims void; failure to file affidavits of assessment prior to December 31, 1981; received by BLM on January 4; claimant filed to district office first).

Thomas G. Mason, 64 IBLA 104 (1982)(12 claims void; failure to file affidavits of assessment prior to December 31, 1981; claimant arrived at the close of business on December 30; claimant was misled by the brochure which did not say that the office had moved).

George Whitehead, 64 IBLA 111 (1982)(2 claims void; failure to file affidavits of assessment prior to December 31, 1981; filing received by BLM on January 4; also notices of location not filed within 90 days).

H. Bowen, Jr., 64 IBLA 264 (1982)(16 claims void; claimant filed in the district office on December 30, and in the state office on January 4; failure to file affidavits of assessment prior to December 31, 1981).

E. L. Divy Divnick, Floyd Vipond, 64 IBLA 297 (1982)(10 claims void; failure to file affidavits of assesament prior to December 31, 1981; documents received by BLM on January 6; claims located in 1931 and 1941; proper filing to this point).

Pittsburgh Pacific Co., 64 IBLA 300 (1982)(2 claims void; failure to file affidavits of assessment prior to December 31, 1981; proper filing to this point; claimant filed early for the 1980 to 1981 assessment year; claimant completed work in December 1980, and mailed documents; must file each calendar year).

David McGinnis, 64 IBLA 302 (1982)(9 claims void; failure to file affidavits of assessment prior to December 31, 1981).

Edna L. Patterson, 64 IBLA 316 (1982)(4 claims void; failure to file affidavits of assesament prior to December 31, 1981; BLM received affidavits on January 4).

Gregory N. Harrington, 64 IBLA 331 (1982)(4 claims void; failure to file affidavits of assesament prior to December 31, 1981; BLM received affidavits on January 14; filing was delayed by County Recorder).

Raymond L. Dinwiddie, 64 IBLA 334 (1982)(2 claims void; failure to file affidavits of assesment prior to December 31, 1981; BLM received affidavits on December 31, at 7:30 a.m.).

C. Douglas Lee, 65 IBLA 41 (1982)(6 claims void; failure to file affidavits of assesment prior to December 31, 1981; affidavits received by BLM on January 13).

Roger Stanley, 65 IBLA 69 (1982)(10 claims void; failure to file affidavits of assesment prior to December 31, 1981; BLM received affidavits on January 6).

Canyonlands Uranium, Inc., 65 IBLA 82 (1982)(400 claims void; failure to file affidavits of assesament prior to December 31, 1981; BLM received affidavits on January 4).

E. Del & Associates, 65 IBLA 170 (1982)(22 claims void; claims located from 1940 to 1964; failure to file affidavits of assesament prior to December 31, 1981; affidavits received in January).

Elmer Transtrum, 65 IBLA 285 (1982)(4 claims void; failure to file affidavits of assesment prior to December 31, 1981; BLM received affidavits on December 31).

Robert A. Sandstedt, Priley Stemweid, 65 IBLA 367 (1982)(1 claim void; failure to file affidavit of assesament prior to December 31, 1981).

David G. Still, 66 IBLA 35 (1982)(13 claims void; failure to file affidavits of assesment prior to December 31, 1981; claimant suggested that the BLM lost the documents).

James T. Hackworth, 66 IBLA 132 (1982)(1 claim void; failure to file affidavit of assesament prior to December 31, 1981; BLM received affidavit on January 9.

Evelyn L. Parent, George V. Hall, 66 IBLA 147 (1982)(35 claims void; failure to file affidavits of assesament prior to December 31, 1981; assessment work not yet due; claims located in 1980).

Geoffrey L. Warren, 66 IBLA 165 (1982)(6 lode claims void; failure to file affidavits of assesament prior to December 31, 1981; claimant sent affidavits by certified mail on December 30, received in BLM office on December 31, at 7:30 a.m.).

Vernon J. Nell, 66 IBLA 171 (1982)(3 lode claims void; failure to file affidavits of assessment prior to December 31, 1981; affidavits received December 31).

Wade McNeil, Flora McNeil, 66 IBLA 228 (1982)(22 lode claims void; failure to file affidavits of assessment prior to December 31, 1981; affidavits received on January 4).

William R. Gaechter, 66 IBLA 230 (1982)(2 claims void; failure to file affidavits of assessment prior to December 31, 1981; claims located in 1932 and 1938; proper filings made up to this point).

Alan T. Trees, James L. Barnes, 66 IBLA 334 (1982) (2 claims void; failure to file affidavits of assessment prior to December 31, 1981; claimant suggested affidavits were lost in the mail).

A. L. Stutenroth, 67 IBLA 6 (1982)(5 lode claims void; failure to file affidavits of assessment prior to December 31, 1981; affidavits received December 31).

Venna Silver Mines Co., Inc., 67 IBLA 130 (1982)(32 lode claims void; failure to file affidavits of assessment prior to December 31, 1981).

James R. Braymen, 67 IBLA 138 (1982)(1 lode claim void; failure to file affidavit of assessment prior to December 31, 1981).

Maureen Carr, 67 IBLA 162 (1982)(3 lode claims void; failure to file affidavits of assessment prior to December 31, 1981; BLM received documents on December 31; claims 40 years old).

John Andrew Batok, 67 IBLA 272 (1982)(1 claim void; failure to file affidavit of assessment prior to December 31, 1981; only filed in county office).

Carl H. Quandt, 67 IBLA 355 (1982)(4 lode claims void; failure to file affidavits of assessment prior to December 31, 1981; affidavits mailed December 29 and received by BLM on December 31).

Robert J. Mahy, 67 IBLA 370 (1982)(4 claims void; failure to file affidavits of assessment prior to December 31, 1981; claimant received incorrect information from BLM; sought BLM advice to clear up problems with claims after prior private litigation).

Laurence Nordstrom, 67 IBLA 398 (1982)(1 claim void; failure to file affidavit of assessment prior to December 31, 1981; affidavit received by BLM on December 31; claim 60 years old; spent considerable time and capital on claim).

Jack L. Wooley, 68 IBLA 13 (1982)(1 claim void; failure to file affidavit of assessment prior to December 31, 1981, because of confusing letter from BLM).

Carolyn C. Crawford, H. Max Chenault, 68 IBLA 19 (1982)(1 lode claim void; failure to file affidavit of assessment prior to December 31, 1981; recorded claim in county office December 28; affidavit received by BLM on January 27).

James J. McFarlane, 68 IBLA 24 (1982)(1 claim void; failure to file affidavit of assessment prior to December 31, 1981; affidavit mailed December 29 and received by BLM on January 4).

Robert F. Thompson, 68 IBLA 120 (1982)(2 lode claims void; failure to file affidavits of assessment prior to December 31, 1981; affidavits received by BLM on January 4; delayed by Christmas mail).

Magma Power Co., 68 IBLA 201 (1982)(175 claims void; failure to file affidavits of assessment prior to December 31, 1981; claimant suggested the BLM lost the documents).

John Heston, 68 IBLA 206 (1982)(5 claims void; failure to file affidavits of assessment prior to December 31, 1981; 1 day late).

Don Noon, 68 IBLA 211 (1982)(3 claims void; failure to file affidavits of assessment prior to December 31, 1981; received on January 4).

Don Tow, 68 IBLA 213 (1982)(9 claims void; failure to file affidavits of assessment price to December 31, 1981; received January 4).

John Loveiady, 68 IBLA 245 (1982)(3 claims void; failure to file affidavits of assessment price to December 31, 1981; affidavits received January 7).

F. A. Story, 68 IBLA 248 (1982)(3 claims void; located in 1948; failure to file affidavits of assessment price to December 31, 1981).

Loyd R. Colaw, 68 IBLA 260 (1982)(1 claim void; failure to file affidavit of assessment price to December 31, 1981; affidavit received on January 7).

Arden F. Griffith, 68 IBLA 286 (1982)(5 claims void; failure to file affidavits of assessment price to December 31, 1981; claimant believes the BLM lost the documents).

Carlyle A. Brough, 68 IBLA 318 (1982)(1 claim void; failure to file affidavit of assessment price to December 31, 1981).

Melvin Bradshaw, 68 IBLA 330 (1982)(233 claims void; failure to file affidavits of assessment price to December 31, 1981; received December 31).

James A. Huff, 69 IBLA 31 (1982)(1 claim void; failure to file affidavit of assessment price to December 31, 1981; claimant believed the BLM lost the document).

Richard E. Neves, 69 IBLA 44 (1982)(2 claims void; failure to file affidavits of assessment price to December 31, 1981; intent to hold filed, forgot to include these claims).

Russell P. Journigan, 69 IBLA 52 (1982)(1 claim void; failure to file affidavit of assessment price to December 31, 1981; affidavit received on January 7).

Harold H. Ruppert, 69 IBLA 82 (1982)(22 claims void; failure to file affidavits of assessment price to December 31, 1981; late appeal dismissed).

Gregory A. Vuetuch, Sr., 69 IBLA 124 (1982)(4 claims void; failure to file affidavits of assessment price to December 31, 1981; affidavits filed with county office on December 31).

Dudley L. Davis, 69 IBLA 127 (1982)(11 claims void; failure to file affidavits of assessment price to December 31, 1981; affidavits lost in mail).

Brent K. Young, 69 IBLA 131 (1982)(20 lode claims void; failure to file affidavits of assessment price to December 31, 1981; claimant sent in other affidavits receipt of which was acknowledged; claims BLM lost the documents).

Orville N. Williams, Helen C. Williams, 69 IBLA 270 (1982)(5 lode claims void; failure to file affidavits of assessment price to December 31, 1981; received by BLM December 31; paid 1982 taxes on claims).

Elton P. Maucori, 69 IBLA 273 (1982)(9 lode claims void; failure to file affidavits of assessment price to December 31, 1981; received January 4; rule that most agencies accept postmark as date of filing insufficient to save claims).

James A. Huff, Elizabeth H. Young, 69 IBLA 368 (1983)(3 lode claims void; failure to file affidavits of assessment price to December 31, 1981; affidavits mailed October 15; claimant believed BLM lost the documents).

Minaro, Inc., 69 IBLA 379 (1983)(17 lode claims void; failure to file affidavits of assessment price to December 31, 1981; claimant suggested the BLM lost the documents).

Lone Number 5, Inc., 70 IBLA 14 (1983)(14 claims void; failure to file notices of intent to hold prior to December 31, 1981; claimant suggested the BLM lost the documents).

Donald O. Shrider, 70 IBLA 36 (1983)(24 lode claims void, located in 1944 and 1946; failure to file affidavits of assessment price to December 31, 1981, because of error by county recorder).

R. R. Meitler, Alfred Rabineau, Heil Crum, 70 IBLA 42 (1983)(25 lode claims void; failure to file affidavits of assessment prior to December 31, 1981).

George Egenhoff, 70 IBLA 49 (1983)(1 lode claim void; failure to file affidavit of assessment prior to December 31, 1981).

William C. Niederer, 70 IBLA 55 (1983)(1 lode claim void; failure to file affidavit of assessment prior to December 31, 1981; claimant suggested the BLM lost the document after it told him it was received).

Robert Paoluccio II, 70 IBLA 118 (1983)(3 claims void; failure to file affidavits of assessment prior to December 31, 1981; claimant believed the documents were lost by the BLM).

Zada Anderson, 70 IBLA 122 (1983)(3 claims void; failure to file affidavits of assessment prior to December 31, 1981; claimant believed the BLM lost the documents).

Joseph L. Bush, Betty Bush, 71 IBLA 324 (1983)(1 claim void; failure to file affidavit of assessment prior to December 31, 1981; BLM received document on January 4; no notice of forfeiture until December 2, 1982; claimant spent money on the claim in 1982).

Eugene W. Waick, Jr., 72 IBLA 30 (1983)(30 lode claims void; failure to file affidavits of assessment prior to December 31, 1981; claimant suggested the BLM lost the documents).

White Rose Corp., 72 IBLA 80 (1983)(4 claims void; failure to file affidavits of assessment prior to December 31, 1981; claimant believed BLM lost the documents).

Eleanor A. Beiser, 72 IBLA 232 (1983)(5 lode claims void; failure to file affidavits of assessment prior to December 31, 1981; made improvements on claims and paid taxes).

Jack Devault, Dorothy Devault, 72 IBLA 324 (1983)(2 claims void; failure to file affidavits of assessment prior to December 31, 1981; claims were located in September 1980; no assessment work was yet due, but notices of intent to hold were required under FLPMA).

David L. Gelis, 72 IBLA 327 (1983)(6 claims void; failure to file affidavits of assessment prior to December 31, 1981; claimant inferred delay caused by BLM).

James D. Ross, Maria J. Ross, 72 IBLA 395 (1983)(2 claims void; failure to file affidavits of assessment prior to December 31, 1981; claimants believed the documents were lost in the mail).

Cletius G. Rogers, 73 IBLA 1 (1983)(1 claim void; failure to file affidavit of assessment prior to December 31, 1981; received by the BLM on January 6).

Gary E. Mertie, 73 IBLA 4 (1983)(1 claim void; failure to file affidavit of assessment prior to December 31, 1981; claimant contends mail was lost by post office).

Myron F. Kenyon, 73 IBLA 10 (1983)(2 claims void; failure to file affidavits of assessment prior to December 31, 1981).

Dean W. Frazier, 73 IBLA 13 (1983)(2 claims void; failure to file affidavits of assessment prior to December 31, 1981, although claimant performed annual assessment work for 25 years).

A. K. Flores, 73 IBLA 142 (1983)(1 lode claim void; failure to file affidavit of assessment prior to December 31, 1981).

Robert B. Hicks, 73 IBLA 145 (1983)(21 claims void; failure to file affidavits of assessment prior to December 31, 1981).

Don Loveladv, 73 IBLA 190 (1983)(3 claims void; failure to file affidavits of assessment prior to December 31, 1981; claimant believed documents were lost in the mail).

Herbert Clark, 73 IBLA 195 (1983)(1 claim void; failure to file affidavit of assessment prior to December 31, 1981; claimant suggested the BLM lost the document).

Humbug Mining Co., 73 IBLA 270 (1983)(1 claim void; failure to file affidavit of assessment prior to December 31, 1981).

Githa T. Nave, 73 IBLA 277 (1983)(4 lode claims void; failure to file affidavits of assessment prior to December 31, 1981).

Harold L. Long, 73 IBLA 280 (1983)(2 claims void; failure to file affidavits of assessment prior to December 31, 1981; claimant suggested they were lost in the mail).

Ray McKee, Cheryl McKee, 73 IBLA 311 (1983)(3 claims void; failure to file affidavits of assessment prior to December 31, 1981).

Jacqueline Baker, 73 IBLA 383 (1983)(1 placer mining claim void; failure to file affidavit of assessment prior to December 31, 1981; proper filings to this point).

Harold H. Block, 74 IBLA 156 (1983)(6 claims void; failure to file affidavits of assessment prior to December 31, 1981; Mr. Block seriously ill and mentally incapacitated).

Bruce Naylor, Bill Barney, Darrell Taylor, 74 IBLA 201 (1983)(40 claims void; failure to file affidavits of assessment prior to December 31, 1981; have done required assessment work for a number of years).

Markay Bar Corp., 75 IBLA 57 (1983)(8 claims void; failure to file affidavits of assessment prior to December 31, 1981; claimant suggested that BLM lost documents; mailed to BLM December 21, 1981).

Joe V. andersen, Art Rubash, Estate of Don T. Anderson, 75 IBLA 71 (1983)(5 claims void; failure to file affidavits of assessment prior to December 31, 1981; appellant claims assessment work was done and proof of labor mailed to BLM).

Floyd R. Bekins, Jr., 75 IBLA 80 (1983)(26 claims; failure to file affidavits of assessment prior to December 31, 1981; sent documents for other claims).

Milford R. Pribble, 75 IBLA 174 (1983)(23 claims; failure to file affidavits of assessment prior to December 31, 1981; claimant suggested the BLM lost the documents; prior filings were timely made, 1981 affidavit was mailed either December 28 or 29).

Dale Rossi, Judy Rossi, 75 IBLA 202 (1983)(6 claims void; failure to file affidavits of assessment prior to December 31, 1981; claimant suggested the BLM lost the documents).

Jon D. Douvris, 75 IBLA 266 (1983)(6 claims void; failure to file affidavits of assessment prior to December 31, 1981; proper filings in 1982 and 1983).

Walter E. Nelson, Thomas C. Nelson, 75 IBLA 269 (1983)(1 claim void; failure to file affidavit of assessment prior to December 31, 1981; claimant suggested the document was lost in the mail; mailed November 18, 1981).

Edmund G. Rich, 75 IBLA 275 (1983)(13 claims void; failure to file affidavits of assessment prior to December 31, 1981; expected county to forward documents to BLM).

Frederick A. Rogers, 75 IBLA 332 (1983)(5 claims void; failure to file affidavits of assessment prior to December 31, 1981).

Raymond J. Garcia, 75 IBLA 340 (1983)(494 claims void; failure to file notices of intent to hold the claims prior to December 31, 1981; located in 1980; no assessment work done yet).

Henry Allen, Harold Dix, 76 IBLA 14 (1983)(4 claims void; failure to file affidavits of assessment prior to December 31, 1981; allegedly sent to BLM after recorded with county on September 28, 1981).

William L. Hanley, 76 IBLA 93 (1983)(9 claims void; failure to file affidavits of assessment prior to December 31, 1981).

Lydia Darlene Shears, 76 IBLA 148 (1983)(1 claim void; failure to file affidavit of assessment prior to December 31, 1981).

Michael J. Roger, 76 IBLA 183 (1983)(1 claim void; failure to file affidavit of assessment prior to December 31, 1981).

W. J. Glass, 76 IBLA 215 (1983)(10 claims void; failure to file notices of intent to hold prior to December 31, 1981; claims located in 1960; no assessment work required yet).

Ralph Kuhinski, 76 IBLA 224 (1983)(5 claims void; failure to file affidavits of assessment prior to December 31, 1981, because of post office delay).

Grace P. Crocker, 76 IBLA 231 (1983)(1 claim void; failure to file affidavit of assessment prior to December 31, 1981).

APPEALS FROM BLM DECISIONS DECLARING MINING CLAIMS VOID FOR FAILURE TO FILE AN ASSESSMENT AFFIDAVIT OR NOTICE OF INTENT TO HOLD THE CLAIM PRIOR TO DECEMBER 31, 1982, PURSUANT TO THE FEDERAL LAND POLICY AND MANAGEMENT ACT, §§ 314(a)(1), 314(c)

Inez McDorman, Audrey Pilger, 72 IBLA 383 (1983)(1 lode claim located in 1914 void; failure to file affidavit of assessment prior to December 31, 1982; received by the BLM on January 4).

William J. Booth, 73 IBLA 274 (1983)(1 lode claim void; failure to file affidavit of assessment prior to December 31, 1982; proper filings to this point; one union was typographical error).

Rex Mining Co., 73 IBLA 284 (1983)(19 lode claims void; failure to file affidavits of assessment prior to December 31, 1982; mailed claims December 30).

Hugh Sprague, 73 IBLA 286 (1983)(3 claims void; failure to file affidavits of assessment prior to December 31, 1982; has held claims for 19 years and done necessary assessment work on them).

J. Bradley Smith, 73 IBLA 288 (1983)(3 claims void; failure to file affidavits of assessment prior to December 31, 1982; received by BLM on January 3, mailed December 27, 1982).

Leonard E. Snider, Sr., 74 IBLA 213 (1983)(4 claims void; failure to file affidavits of assessment prior to December 31, 1982; timely filings before 1982; 1982 time problems resulted from uncle's illness).

Arthur A. Tinoco, 74 IBLA 221 (1983)(1 claim void; failure to file affidavit of assessment prior to December 31, 1982; received on January 3; postmarked on December 31; proofs of labor for 1979, 1980 and 1981 were all timely filed; 1982 filing delayed by claimant's surgery).

Lee Sandsberry, 74 IBLA 223 (1983)(2 claims void; failure to file affidavits of assessment prior to December 31, 1982; postmarked December 30; delay due to serious car accident; family held claims for 30 years).

J.L. Shires, 74 IBLA 226 (1983)(7 claims void; failure to file affidavits of assessment prior to December 31, 1982; mailed affidavits on December 30).

Pierke Potter, 74 IBLA 307 (1983)(1 claim void; failure to file affidavit of assessment prior to December 31, 1982; received by BLM on January 13, 1983; appellant claims he mailed affidavit on October 2, 1982).

Delbert A. Brown, 75 IBLA 74 (1983)(7 claims void; failure to file affidavits of assessment prior to December 31, 1982; claims mailed in September 1982).

Las Vegas Portland Cement, Inc., 75 IBLA 104 (1983)(25 claims void; failure to file affidavits of assessment prior to December 31, 1982; claims located in 1981; several thousand dollars have been spent on claims in testing and drilling).

Three Rivers Mining Co., 75 IBLA 170 (1983)(15 claims void; failure to file affidavits of assessment prior to December 31, 1982; mailed October 5, 1982).

Estate of Stanley Styles, 75 IBLA 272 (1983)(25 claims void; failure to file affidavits of assessment prior to December 31, 1982; Styles died in late 1982).

Rachel G. Conover, 75 IBLA 320 (1983)(2 claims void; failure to file affidavits of assessment prior to December 31, 1982).

Bill R. Monroe, 75 IBLA 325 (1983)(15 claims void; failure to file affidavits of assessment prior to December 31, 1982; appellant claims copies of affidavits mailed to BLM on October 14, 1982).

Cliff Sassetti, 76 IBLA 8 (1983)(1 claim; failure to file affidavit of assessment prior to December 31, 1982; received January 3; blizzard prevented him from mailing it on December 27; December 31 claimant skied 15 miles to nearest town and mailed).

Elliott Glasser, 76 IBLA 11 (1983)(10 claims void; failure to file affidavits of assessment prior to December 31, 1982; resulted from delayed return of his proof of labor from county).

Moonwalker, Inc., 76 IBLA 53 (1983)(188 claims void; failure to file affidavits of assessment prior to December 31, 1982; filed proof of labor for 77 of these claims).

Robert W. Hughes, 76 IBLA 99 (1983)(27 claims void; failure to file affidavits of assessment prior to December 31, 1982; mailed August 27, 1982).

Edward H. Beck, 76 IBLA 80 (1983)(1 claim void; failure to file affidavit of assessment prior to December 31, 1982; received January 3, 1983; proof of labor was timely filed with BLM in 1979 and 1980).

John V. Bolding, 76 IBLA 218 (1983)(5 claims void; failure to file affidavits of assessment prior to December 31, 1982; BLM alleges claimant filed for wrong year).

John Milner, 76 IBLA 221 (1983)(1 claim void; failure to file affidavit of assessment prior to December 31, 1982).

C. G. Rhinehardt, 76 IBLA 228 (1983)(5 claims void; failure to file affidavits of assessment prior to December 31, 1982; claimant filed in 1981 for two years of assessment work; must file yearly).

Crownite Corp., American Pumic Products, Inc., 76 IBLA 236 (1983)(13 claims void; failure to file affidavits of assessment prior to December 31, 1982; affidavits received by BLM on January 10).

Hiko Bill Mining and Oil Co., 76 IBLA 254 (1983)(7 claims void; failure to file affidavits of assessment prior to December 31, 1982; lost in mail).

Edmund J. Cowan, 76 IBLA 257 (1983)(6 claims void, located in 1939; failure to file affidavits of assessment prior to December 31, 1982; BLM opinion said affidavits due in 1981).

Adolf Diechmann Trust, 76 IBLA 357 (1983)(53 claims void, located in 1907 and 1928; failure to file affidavits of assessment prior to December 31, 1982; dispute as to definition of "file"; mail lost).

Homestake Mining Co., 77 IBLA 235 (1983)(6,811 claims void; failure to file affidavits of assessment prior to December 31, 1982; claimant contended documents mailed to BLM).

J. Neil Smith, 77 IBLA 239 (1983)(1 claim void; failure to file affidavit of assessment prior to December 31, 1982; claimant contended he mailed documents; BLM claims they were never received).

AMICUS CURIAE

BRIEF

FOR REGUMENTS

Supreme Court, U.S.
FILED
AUG 18 1984
ALEXANDER L. STEVAS
CLERK

NO. 83-1394

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

UNITED STATES OF AMERICA, et al.,

Appellants,

v.

MADISON D. LOCKE, et al.,

Appellees.

BRIEF OF AMICUS CURIAE COLORADO MINING ASSOCIATION IN SUPPORT OF APPELLEES

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BRIEF OF AMICUS CURIAE
COLORADO MINING ASSOCIATION

IN SUPPORT OF APPELLEES

TABLE OF CONTENTS

	Page
INTEREST OF AMICUS CURIAE COLORADO MINING ASSOCIATION ...	1
SUMMARY OF ARGUMENT	3
STATEMENT OF FACTS	4
ARGUMENT	5
I. UNPATENTED MINING CLAIMS ARE PROPERTY INTERESTS ENTITLED TO FULL PROTECTION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT	6
II. THE APPLICATION OF SECTION 314(c)'s AUTOMATIC FORFEITURE PROVISIONS TO PREVIOUSLY RECORDED CLAIMS CAUSES THE LOSS OF MINING CLAIMS THAT CONGRESS DID NOT INTEND TO ELIMINATE	15
A. Congress' Objective in Enacting Section 314 Was to Eliminate Stale Mining Claims	15
B. Section 314(c) Creates an Improper Irrebutable Presumption When Applied to Previously Recorded Claims	19
III. REQUIRING THE BLM TO FURNISH A PRE-EXTINGUISHMENT NOTICE WOULD PROVIDE VALUABLE SAFEGUARDS AND WOULD NOT ADD ANY SIGNIFICANT BURDENS TO THE ADMINISTRATION OF SECTION 314	30

TABLE OF AUTHORITIES

CASES:	Page
Bell v. Burson, 402 U.S. 535 (1971) .	27
Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963)	13
Board of Curators of University of Missouri v. Horowitz, 435 U.S. 78 (1978)	7
Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974)	15
Emerson v. McWhirter, 133 Cal. 510, 65 P. 1036 (1901)	12
Florence-Rae Copper Co. v. Kimbel, 85 Wash. 162, 147 P. 881 (1915)	12
Griswold v. Connecticut, 381 U.S. 479, 501 (1965)	7
Hammer v. Garfield Mining & Mill Co., 130 U.S. 291 (1889)	12
Hickel v. Oil Shale Corp., 400 U.S. 48 (1970)	11
Johnson v. Young, 18 Colo. 625, 34 P. 173 (1893)	12
Knight v. Flat Top Mining Co., 6 Utah 2d 51, 305 P.2d 503 (1957)	11
Locke v. United States, 573 F.Supp. 472 (D. Nev. 1983)	13
Mathews v. Eldridge, 424 U.S. 319 (1976)	23

CASES: Page

Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) 23

Moore v. City of East Cleveland, Ohio, 431 U.S. 494, 503 (1977) 7

Morrissey v. Brewer, 408 U.S. 471 (1972) 32

Pension Benefit Guaranty Corp. v. R. A. Gray and Co., U.S. _____ (June 18, 1984) 14

Rogers v. United States, 575 F.Supp. 47 (D. Montana 1982) 13

Rush v. French, Ariz. 99, 25 P. 186 (1874) 12

Sakow v. J.E. Riley Inv. Co., 9 Alaska 427 (1939) 11

Stanley v. Illinois, 405 U.S. 657 (1972) 14,15 26,27 29

Texaco v. Short, 454 U.S. 516 (1982) 16,23 24,25 26

Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (C.D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1981) 19

Usery v. Turner Elkhorn Mining Co., 428 U.S. 1 (1976) 14

Vlandis v. Kline, 412 U.S. 441 (1973) 21

CASES: Page

Weinberger v. Salfi, 422 U.S. 749 (1975) 13

Wilbur v. United States ex rel. Krushnic, 280 U.S. 306 (1930) 12,13

Wolff v. McDonnell, 418 U.S. 539, 558 (1974) 23

STATUTES:

General Mining Law of 1872, 30 U.S.C. §21 et. seq., 17 Stat. 91

Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, 90 Stat. 2743, codified at 43 U.S.C. (8 Supp. V) 1701 et seq. ..... passim

§ 314(a), 43 U.S.C. 1744(a) ..... passim
§ 314(b), 43 U.S.C. 1744(b) ..... passim
§ 314(c), 43 U.S.C. 1744(c) ..... passim

General Mining Act of 1872, ch. 152, 17 Stat. 91 et seq., codified at 30 U.S.C. 621 et seq.

REGULATIONS:

43 C.F.R. Subpart 3833 (1980) ... 31,33
43 C.F.R. Subpart 3833 (1983) ... 31,33

MISCELLANEOUS:

H.R. Rep. 94-1163, 94th Cong., 1st Sess. (1976) 21

MISCELLANEOUS: Page

Public Land Law Review Commission, One Third of of the Nation's Land: A Report to the President and to the Congress (1970) 16,17 18

S. Rep. 94-583, 94th Cong. 1st Sess. (1975) 17

American Law of Mining 8,9, 10,21

INTEREST OF AMICUS CURIAE

COLORADO MINING ASSOCIATION*

The Colorado Mining Association is a trade association, founded in 1876 and incorporated in 1897. Its membership is composed of (a) companies that explore for, produce and refine metals, coal, oil shale and industrial minerals; (b) companies that manufacture and distribute mining and mineral processing equipment and supplies; (c) commercial banks and other institutions serving the mining industry; and (d) individuals engaged in these various phases of the mineral industry.

The Colorado Mining Association is headquartered at 1515 Cleveland Place, Denver, Colorado 80202. It serves as a spokesman for the mining industry in Colorado. The Association works in

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* This brief is filed with the written consent of both appellants and appellees.

cooperation with other state and national mining associations, keeping the industry informed on pending state and federal legislation and promulgating constructive programs and actions that adequately will recognize and serve mining's special problems and needs. It serves the industry on a wide range of subjects through the expertise of its members and member companies on standing, ad hoc, and select committees.

Many of the Association's members are in the business of owning, locating, exploring, developing and operating unpatented mining claims located on public lands of the United States. These members are affected directly by the recordation provisions of the Federal Land Policy and Management Act of 1976 ("FLPMA").[1]

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1 Pub. L. No. 94-579, October 21, 1976, 90 Stat. 2743, §§ 101 et seq. (codified at 43 U.S.C. §§ 1701, et seq.).

SUMMARY OF ARGUMENT

The use of Section 314(c) of FLPMA to eliminate, automatically and without notice, mining claims that previously have been recorded (hereinafter described as "previously recorded claims") in compliance with Section 314(b) violates the Due Process Clause of the Fifth Amendment because:

(1) Unpatented mining claims are property interests entitled to full due process protection.

(2) The use of Section 314(c) to automatically eliminate a previously recorded claim when a mining claim owner fails to file a subsequent notice under Section 314(a) constitutes an improper use of an irrebutable presumption of

--andonment and causes the loss of mining claims that Congress did not intend to eliminate.

(3) No significant administrative burden would be created by requiring the Bureau of Land Management ("BLM") to provide a pre-extinguishment notice to the owner of a previously recorded mining claim who has failed to make a filing in compliance with Section 314(a).

STATEMENT OF FACTS

Amicus Curiae Colorado Mining Association hereby adopts the facts as set forth in the Statement of the Case submitted herein by appellees, Madison D. Locke, et al.

ARGUMENT

The Court has noted repeatedly that no precise standards exist for determining whether a statute violates the Due Process Clause. "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." Morrissey v. Brewer, 408 U.S. 471, 481 (1972). However, three general guidelines have emerged from the Court's decisions and were enumerated in Mathews v. Eldridge, 424 U.S. 319 (1976):

> [O]ur prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's

> interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id. at 334-35. Applying this analysis to the mining claims involved in the present case and to other mining claims similarly situated, the forefiture provisions of Section 314(c) can be seen to constitute an unfair and arbitrary deprivation of substantial property interests, in violation of the Due Process Clause. Each of the factors set forth in Mathews, supra, is analyzed separately below.

I. UNPATENTED MINING CLAIMS ARE PROPERTY INTERESTS ENTITLED TO FULL PROTECTION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT.

This Court has noted that "appropriate limits on substantive due process come not from drawing arbitrary lines but rather from careful 'respect

for the teachings of history [and], solid recognition of the basic values that underlie our society'". Moore v. City of East Cleveland, Ohio, 431 U.S. 494, 503 (1977) (quoting Griswold v. Connecticut, 381 U.S. 479, 501 (1965) (Harlan, J., concurring). An examination of the history of the private interest affected by government regulation is, therefore, relevant to a determination of the level of protection to be accorded to that interest. See Board of Curators of University of Missouri v. Horowitz, 435 U.S. 78, 87-91 (1978); Moore v. City of East Cleveland, supra at 500-03.

Mining claims are a unique type of real property. They historically have been entitled to a high level of protection against deprivation by another individual or the government. When the public lands of the West were first opened to mineral development, it was

recognized by the miners themselves that security of possession of a mining claim was necessary to allow development of the mineral resources. Credit was difficult to obtain without security of title, and miners could not protect their claims against rival claimants. The miners therefore organized mining districts, and they established and enforced rules to govern mining claims. 1 Am. L. of Mng. §§ 1.8, 1.9 (1983).

The regulation of mining claims always has been heavily influenced by these local rules and customs.[2]

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2 The General Mining Law explicitly recognizes the right of local mining districts to make regulations governing location, manner of recording, and the amount of work necessary to hold a claim. 30 U.S.C. § 28. These local regulations have largely been superseded by state laws. 1 Am. L. of Mng. § 5.46 (1983).

These rules are incorporated into state laws concerning perfection of mining claims and federal statutes such as the General Mining Law of 1872 (the "General Mining Law"), 30 U.S.C. § 21 et. seq., 17 Stat. 91. 1 Am. L. of Mng. §§ 1.18, 5.46 (1983). Miners must comply with the requirements of both federal and state law. The General Mining Law requires the discovery of a valuable mineral deposit, 30 U.S.C. § 23, the posting of notice of the location of the claim, and the performance of $100 worth of labor annually, 30 U.S.C. § 28. It contains no recording requirement, but establishes the minimum contents of a record in the event that a state or mining district should require recording of claims. 30 U.S.C. § 28.

State mining statutes are not uniform, although their requirements are similar. 1 Am. L. of Mng. § 1.22

(1983). In order to perfect a claim, state location statutes usually require:

> (1) discovery of mineral initiating the appropriation and dating the right;
>
> (2) posting at or near the time of discovery, to evidence the locator's intent to appropriate and to give notice of the claim he has made;
>
> (3) discovery work, to the extent required in the particular jurisdiction, to determine the character of the deposit;
>
> (4) marking the claim on the ground from information obtained by the discovery work; and
>
> (5) filing a location certificate of record as proof of the location made.

1 Am. L. of Mng. § 5.49 (1983). Strict compliance with the requirements of federal, state, or local regulations has seldom been required.[3] This is due in

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3 See generally 1 Am. L. of Mng. § 1.9 (1983), n.14 (citing cases concerning compliance with local rules); §§5.53,

(footnote continued on next page)

part to a recognition that "the possessory title" of the claimant, granted by 30 U.S.C. § 26, will not be disturbed on flimsy or insubstantial grounds," Hickel v. Oil Shale Corp., 400 U.S. 48, 57 (1970). Forfeitures[4] of mining claims were strongly disfavored, see, e.g., Sakow v. J.E. Riley Inv. Co., 9 Alaska 427 (1939); Knight v. Flat Top

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(footnote continued from previous page)

5.67 and 5.78 (concerning compliance with posting, marking and recording requirements of state law); see also Hickel v. Oil Shale Corp., 400 U.S. 48 (1970) (establishing a "substantial compliance" standard for assessment work under 30 U.S.C. §28).

4 "Abandonment" and "forfeiture" frequently are confused.

> Abandonment is a voluntary, intentional act on the part of the abandoning claimant; forfeiture is the result (regardless of the claimant's intent) of the act of the claimant or of a third person . . . or of the existence of some particular condition.

1 Am. L. of Mng. § 8.2 (1983).

Mining Co., 6 Utah2d 51, 305 P.2d 503 (1957), and usually were not enforced when a claimant could demonstrate that he had in good faith located, possessed, and worked his claim. Emerson v. McWhirter, 133 Cal. 510, 65 P. 1036 (1901); Florence-Rae Copper Co. v. Kimbel, 85 Wash. 162, 147 P. 881 (1915). The burden of proving a forfeiture rested upon the person asserting it, Hammer v. Garfield Mining & Mill Co., 130 U.S. 291 (1889), and a forfeiture would not be presumed, Rush v. French, Ariz. 99, 25 P. 816 (1874); Johnson v. Young, 18 Colo. 625, 34 P. 173 (1893).

Consistent with this historical treatment of mining claims, the Court has long recognized that an unpatented mining claim is a possessory mineral interest in land that is protected by the Due Process Clause of the Fifth Amendment. Wilbur v. United States ex rel. Krushnic, 280 U.S.

306, 316 (1930); Best v. Humboldt Placer Mining Co., 371 U.S. 334, 335 (1963); Rogers v. United States, 575 F.Supp. 47 (D. Montana 1982); Locke v. United States, 573 F. Supp. 472, 474 (D. Nev. 1983). The Court has held:

> The rule is established by innumerable decisions of this Court, and of state and lower federal courts, that, when the location of a mining claim is perfected under the law, it has the effect of a grant by the United States of the right of present and exclusive possession. The claim is property in the fullest sense of that term . . . .

Wilbur v. United States, supra at 316. An unpatented mining claim clearly is a property interest entitled to the protection of the Due Process Clause.

In Weinberger v. Salfi, 422 U.S. 749 (1975), this Court noted a distinction between cases involving "important liberties cognizable under the Constitution" and "a non-contractual

claim to receive funds from the public treasury [which] enjoys no constitutionally protected status . . . ." Weinberger v. Salfi, supra at 785, 772. The present case does not involve the type of social welfare legislation at issue in Weinberger v. Salfi;[5] rather, it involves a constitutionally protected interest comparable to the interests at stake in Stanley v. Illinois, 405 U.S. 645 (1972)(unwed father's interest in retaining custody of his children) and

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5 Many of the cases relied upon by the Government and its amicus curiae Sierra Club involve economic regulation, not regulation of constitutionally-protected rights and interests. See Usery v. Turner Elkhorn Mining Co., 428 U.S. 1 (1976); Pension Benefit Guaranty Corp. v. R.A. Gray and Co., ___ U.S. ___ (June 18, 1984); Mourning v. Family Publications Service, Inc., 411 U.S. 356 (1973). The strong deference accorded legislation in the field of national economic policy is not appropriate where legislation regulates important liberty and property interests.

Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974) (teacher's interest in bearing children). These cases hold that when the interest burdened is cognizable under the Constitution, the Due Process Clause requires greater precision in fashioning means to achieve the stated legislative purposes. In many cases, due process may require an individualized determination of the relevant facts. Cleveland Board of Education v. LaFleur, supra at 745; Stanley v. Illinois, supra at 652 - 658.

II. THE APPLICATION OF SECTION 314(c)'s AUTOMATIC FORFEITURE PROVISIONS TO PREVIOUSLY RECORDED CLAIMS CAUSES THE LOSS OF MINING CLAIMS THAT CONGRESS DID NOT INTEND TO ELIMINATE.

A. Congress' Objective in Enacting Section 314 Was to Eliminate Stale Mining Claims.

Congress' clear and overriding concern in enacting Section 314 was the

elimination of stale mining claims.[6] This purpose of Section 314 is consistent with the conclusions of the Public Land Law Review Commission, which recommended that "Congress should establish a fair notice procedure (a) to clear the public lands of long dormant mining claims, and (b) to provide the holders of existing mining claims an option to perfect their claims under the revised location provisions we recommend." Public Land Law Review Commission, One-Third of the Nation's Land: A Report to the President

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6 The primary purposes of the Indiana Dormant Mineral Interests Act, which was challenged in Texaco v. Short, 454 U.S. 516 (1982), were different from those of Section 314 of FLPMA. The Indiana Act was designed primarily to encourage owners of mineral interests to develop their interests, as well as to improve the ability of the state to collect property taxes on mineral interests. See also, Contos v. Herbst, 278 N.W. 2d 732 (Minn. 1979), appealed dismissed, 444 U.S. 835 (1979)(noting significance of forfeiture as means of ensuring compliance with tax law).

and to the Congress 130 (1970) ("PLLRC Report"). The Senate Committee on Interior and Insular Affairs expressed a similar concern:

> [T]he Committee did address a particular procedural problem concerning the registration of mining claims -- the problem which is particularly frustrating to the public land manager. The source of this problem is what is often termed "stale claims" . . . federal land managers do not have any easy way of discovering which federal lands are subject to either valid or invalid mining claim locations.

S. Rep. 94-583, 94th Cong., 2nd Sess. 64 (1976) ("S. Rep. 94-583"). Congress clearly had no intention of extinguishing active mining claims; indeed, extinguishing active claims would be contrary to the goals of effective land use planning and management. Neither the Public Law Review Commission nor Congress believed it necessary to undertake a

wholesale revision of the General Mining Laws. PLLRC Report at 124; S. Rep. 94-583 at 65. Rather, Congress wished to establish a procedure for identifying valid claims, rather than a substantive requirement that would lead to invalidation of active claims.[7] See S. Rep. 94-583, supra at 64. While Section 314 also had other purposes such as land use planning and identification of

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7 The Public Land Law Review Commission also viewed the recording requirements as a procedure designed to give notice of a claim, rather than a substantive requirement for perfection of a claim.

> We do not favor any change in the title consequences which flow from recordation under state law. However, we do recommend that locators be required to give written notice of their claims to the appropriate Federal land agency within a reasonable time after location.

PLLRC Report at 126.

unauthorized occupanies,[8] these objectives were secondary to the goal of eliminating stale claims.

B. Section 314(c) Creates an Improper Irrebutable Presumption When Applied to Previously Recorded Claims.

The United States admits that the appellees in the present case complied fully with the initial filing requirements of Section 314(b) by recording the appropriate documents in the Nevada State Office of the BLM on October 19, 1979. Appellant's Brief, p. 7. These documents fulfilled the primary purpose of Section 314 by making the government's land managers aware of the existence, location, size and ownership of appellees' claims. However, no

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8 See, e.g., Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (C.D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1981).

further important governmental purpose or objective was served by forfeiting appellees' claims simply because they were one day late in recording the documents required by Section 314(a). To the contrary, appellees were in active possession and operation of their claims and had demonstrated no intention to abandon those claims. The forfeiture of their claims was a drastic penalty that caused them to suffer a loss far outweighing any governmental interests served by the subsequent recordation requirements of Section 314(a). The cause of this imbalance is Section 314(c)'s irrebutable presumption of abandonment, as applied to previously recorded claims.

The plain language of Section 314(c) indicates that Congress intended to create an irrebuttable presumption of abandonment. Under prior law, abandon-

ment could be proved by acts that evidenced an intent to abandon, including failure to file required instruments. 2 Am. L. of Mng., § 8.3 (1983). Congress wished to eliminate abandoned claims, and in Section 314(c) it enacted a procedural shortcut to the factual finding of abandonment. The district court was therefore correct in finding that Section 314(c) created an irrebuttable presumption of abandonment, for this is the most reasonable interpretation of the language of the statute and its legislative history. See H.R. Rep. 94-163, 94th Cong., 1st Sess. 11 (1976).

The district court also correctly applied the test established in Vlandis v. Kline, 412 U.S. 441 (1973), to invalidate Section 314(c). "The State's interest in administrative ease and certainty cannot, in and of itself, save the conclusive presumption from

invalidity under the Due Process Clause where there are other reasonable and practical means of establishing the pertinent facts on which the State's objective is premised." Vlandis v. Kline, supra at 451. The district court properly found that the presumption established by Section 314(c) failed to satisfy either requirement of the two-part test in Vlandis v. Kline, and thus failed to satisfy the requirements of due process.[9] Congress clearly possesses the authority to impose reasonable conditions on the retention of an unpatented mining claim, but the Due

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9 Vlandis v. Kline invalidated a conclusive presumption that non-resident students remained non-residents throughout their period of enrollment in the state university. This presumption violated due process because it was not necessarily true and because there existed reasonable alternative procedures for making the determination of residency. Vlandis v. Kline, supra at 445-455.

Process Clause limits the power of Congress to extinguish property interests arbitrarily. See Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1, 9, (1978); Mathews v. Eldridge, 424 U.S. 319, 332 (1976); Wolff v. McDonnell, 418 U.S. 539, 558 (1974).

The United States and amicus curiae Sierra Club place great reliance upon this Court's decision in Texaco, Inc. v. Short, 454 U.S. 516 (1982). That reliance is misplaced, although the general principles set forth in that decision govern the present case:

> We have no doubt that, just as a state may create a property interest that is entitled to constitutional protection, the State has the power to condition the permanent retention of that property right on the performance of reasonable conditions that indicate a present intention to retain the interest.

Texaco v. Short, supra at 516 (emphasis added). However, both the United States

and the Sierra Club ignore critical differences between Section 314(c) of FLPMA, as applied to previously recorded claims, and the Indiana Dormant Mineral Interests Act, which was upheld in Texaco, Inc. v. Short, supra.

The Indiana statute offered four different means by which a mineral owner could prevent the extinguishment of his mineral interest: (1) actual or attempted production of minerals; (2) payment of rents or royalties; (3) payment of taxes; or (4) filing a statement of claim with the local recorder of deeds.[10] Texaco, Inc. v. Short, 102 S. Ct. at 876, n.6. If Section 314 of FLPMA contained similar standards, appellees would not be before

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10 Unlike FLPMA's Section 314(a), the Indiana Act did not require annual filings. At most, it required a filing every 20 years. Texaco v. Short, 102 S. Ct. at 786-87, n.7.

this Court today, because they had developed their claims actively. Section 314(c), however, provides that filing of an affidavit or notice shall be an absolute requirement for retention of a claim, rather than one of several alternative methods of preserving a claim.

In Texaco, Inc. v. Short, supra, the Court considered the reasonableness of the Indiana statute as a whole. It did not consider the reasonableness of the filing requirement in isolation from the other means by which a mineral interest owner could preserve his claim, nor did it consider the reasonableness of an annual filing requirement. It simply does not follow from the holding in Texaco, Inc. v. Short that failure to satisfy any filing requirement can be grounds for extinguishment of a property

interest.[11] Therefore, the United States cannot rely on Texaco v. Short for the proposition that Congress can impose a filing requirement such as that contained in Section 314(a) as the sole condition for retaining an unpatented mining claim.[12]

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11 The United States argues that a filing requirement can serve many legitimate purposes. Appellant's Brief, p. 21, n.15. Due process still requires an analysis of whether the filing requirement is the appropriate means to achieve the ends identified by Congress.

> But we are here not asked to evaluate the legitimacy of the state ends, rather, to determine whether the means used to achieve these ends are constitutionally defensible.

Stanley v. Illinois, supra at 652. The burden imposed by Section 314(c) on the appellees' property interest must still be weighed against the importance of the government functions.

12 When the legislature identifies a particular standard for deprivation of an important individual interest, the legislature cannot use other factors to

(footnote continued on next page)

In this case, where Congress purports to be concerned with stale

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(footnote continued from previous page)

justify deprivation of that interest unless those factors are closely related to the initial standard. In Stanley v. Illinois, supra, an Illinois statute provided for the removal of children from the custody of unfit parents. The statute further provided that an unwed father was not a "parent," and therefore was not entitled to a determination of his fitness as a parent before his children became wards of the state. While recognizing the legitimate purposes of the statute, the Court recognized that many unmarried fathers were fit to have custody of their children. Because of the importance of the father's interest and the lack of a close relationship between the characteristics "unwed" and "unfit", the Court held that due process required an individualized determination of the father's fitness to retain custody. Stanley v. Illinois, supra at 656-7. Similarly, a state cannot suspend the license of a driver involved in an accident without a hearing on the question of fault. Bell v. Burson, 402 U.S. 535 (1971). When the state's system of regulating driver's licenses is "fault-oriented", the state cannot eliminate consideration of fault when depriving an individual of his license. Bell v. Burson, supra at 541, 542. The Court found the relationship between fault and involvement in an accident to be too attenuated to permit deprivation of a driver's license, without an individualized determination of fault.

claims, the relationship between failure to file the annual notices and abandonment of a previously recorded claim is too attenuated to permit forfeiture of that claim based solely on a failure to file under Section 314(c). Where the property interest affected is substantial, due process requires that the factor chosen by Congress as justifying forfeiture of the claim be closely related to an actual abandonment of the mining claim. Congress cannot provide for elimination of the appellees' mining claims based solely on their failure to file the notice required by Section 314(a).

The United States argues that the abolition of the automatic forfeiture feature of Section 314(c) would thwart the Congressional desire for accurate and up-to-date records. Appellants' Brief, p. 20. This argument must fail from

several perspectives. First, the Constitution "recognizes higher values than speed and efficiency." Stanley v. Illinois, 450 U.S. 645, 656 (1972). One of these values is the right to due process of law before being deprived of property. Second, the government misses the point that the automatic forfeiture requirement leads to inaccurate records by designating active claims as abandoned. The extinguishment of an active mining claim is contrary to the goals of efficient land use planning and does not further the goals of FLPMA. Finally, a determination by the Court that Section 314(c) is unconstitutional, as applied to previously recorded claims, would not necessarily lead to a total dismantling of the recording requirements of either Section 314(a) or Section 314(b). As discussed in Part III below, those requirements could be kept in place

if certain procedural safeguards were added to the BLM recordation system.

The Due Process Clause requires a flexible analysis to determine what protections must be provided to an individual interest affected by an action of the government. In this case, the appellees possessed a property interest protected by the Due Process Clause. Congress, in attempting to eliminate stale mining claims, has established a procedure that results in the improper elimination of active claims through use of Section 314(c)'s irrebutable presumption.

III. REQUIRING THE BLM TO FURNISH A PRE-EXTINGUISHMENT NOTICE WOULD PROVIDE VALUABLE SAFEGUARDS AND WOULD NOT ADD ANY SIGNIFICANT BURDENS TO THE ADMINISTRATION OF SECTION 314.

The appellees are in a different position than a mining claim owner who has failed to make the initial claim

recordation under Section 314(b) of FLPMA. The United States admits that appellees met the initial filing requirements on October 19, 1979. Appellants' Brief, p. 7. As such, the documents filed included appellees' then-current mailing address.[13] Indeed, the BLM apparently was aware of that address because on April 4, 1981, it served appellees with a form letter informing them that their mining claims were being declared "abandoned and void" by the BLM. Appellant's Brief, p. 7. Thus, the BLM had available to it a very simple means by which it could have advised appellees of their erroneous December 31, 1981 filing and provided

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13 43 C.F.R. § 3833.1-2(a) and (c)(2) (1980), originally published in 42 Fed. Reg. 5300 (Jan. 27, 1977), and amended at 44 Fed. Reg. 9722 (Feb. 14, 1979). These regulations have now been superseded by the regulations in 43 C.F.R. Subpart 3833 (1983).

them with an opportunity to make a corrective filing in order to demonstrate that they intended to hold and maintain their claims.

The United State argues that the automatic forfeiture provision of Section 314(c) "promotes administrative convenience" by relieving land managers of "cumbersome title searches". Appellants' Brief, pp. 18-19. Even assuming, arguendo, that this assertion is factually correct,[14] it has no application to previously recorded

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14 The United States attempts in its brief to buttress the record on the administrative burden likely to result from the invalidation of Section 314(c). Brief for the Appellants at 18 n.12 ("BLM has advised us that . . . ."), and p. 19 n. 14. This effort is improper, and the case must be reviewed based upon the record before the trial court. Morrissey v. Brewer, 408 U.S. 471, 476-77 (1972). The United States chose to appeal this case despite its failure adequately to develop a factual record on this issue.

claims, such as those of appellees in the present case. No significant administrative burden would fall upon the BLM if it were required to furnish a pre-extinguishment notice to an owner of a previously recorded claim who, through inadvertence or otherwise, has failed to make a subsequent recording under Section 314(a). The BLM already has in place a procedure by which it notifies and gives a 30-day grace period to a mining claim owner who makes the initial recordation but fails to accompany that recordation with the required fee of $5.00 per claim. 43 C.F.R. § 3833.1-3 (1983).[15] The BLM easily, therefore, could provide a similar notice and grace period to an

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15 Section 314 provides for no such notice and grace period, nor did the BLM's original regulations under Section 314. 43 C.F.R. Subpart 3833 (1980). The notice and 30-day grace period provisions were added by the BLM in late 1982. 47 Fed. Reg. 58300 (Dec. 15, 1982).

owner of a previously recorded claim who fails to make a subsequent recording under Section 314(a). The administrative burden of such a notice and grace period would be minimal, particularly when weighed against the loss of a valuable mineral property, such as that involved in the present case.[16]

Finally, the United States argues that Section 314 imposes only minor

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16 This is not to say that the notice-plus-cure approach is the only means by which the United States could make Section 314(c) meet the requirements of the Due Process Clause. The statute probably would be valid if it provided alternative reasonable means by which a mining claim owner who has already recorded his claim with the BLM could demonstrate that he intends to continue to hold his claim. For example, a combination of factors such as those utilized in the Indiana statute (payment of taxes, operations, or payment of rents or royalties) in Texaco, Inc. v. Short, supra, would suffice. However, the pre-extinguishment notice approach is suggested here because it contains the combined elements of providing valuable protection to the owner of a previously recorded claim, while creating very little additional work for the BLM.

burdens on mining claim owners. Appellant's Brief, p. 20. This fact alone, even if true, does not justify imposing the enormous burden of forfeiture if the owner of a previously recorded claim fails to make a subsequent recording under Section 314(a). It is the penalty exacted by the automatic forfeiture provisions of Section 314(c), not the reasonableness of the annual recording requirement itself, that violates due process standards.

CONCLUSION

For the foregoing reasons, amicus curiae Colorado Mining Association requests that the decision of the district court be affirmed.

Respectfully submitted,

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BRIEF

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In the Supreme Court of the United States

OCTOBER TERM, 1984

UNITED STATES OF AMERICA, ET AL., APPELLANTS

v.

MADISON D. LOCKE, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

REPLY BRIEF FOR THE APPELLANTS

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TABLE OF AUTHORITIES

Cases: Page

Best v. Humboldt Mining Co., 371 U.S. 334 14
Black v. Elkhorn Mining Co., 163 U.S. 445 14
Buckley v. Valeo, 424 U.S. 1 17
California ex rel. State Lands Comm'n v. United States, 457 U.S. 273 16
Champlin Refining Co. v. Corporation Comm'n, 286 U.S. 210 17
Cipriano v. City of Houma, 395 U.S. 701 17
Farrell v. Lockhart, 210 U.S. 142 10
Heckler v. Community Health Services, No. 83-56 (May 21, 1984) 15-16
Mathews v. Eldridge, 424 U.S. 319 ..... 2, 3, 4
Morrissey v. Brewer, 408 U.S. 471 ..... 2, 3, 4
Texaco, Inc. v. Short, 454 U.S. 516 ..... 2, 16
United States v. California, 332 U.S. 19 16

Constitution, statutes, and regulations:

U.S. Const. Amend. V (Due Process Clause) 2
Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*:
§ 201(a), 43 U.S.C. 1711(a) 8
§ 202(a), 43 U.S.C. 1712(a) 8
§ 203, 43 U.S.C. 1713 8
§ 204, 43 U.S.C. 1714 9
§ 206, 43 U.S.C. 1716 8
§ 302(b), 43 U.S.C. 1732(b) 10
§ 314, 43 U.S.C. 1744 ..... passim
§ 314(a), 43 U.S.C. 1744(a) 2, 3, 5, 17
§ 314(a)(1), 43 U.S.C. 1744(a)(1) 7
§ 314(b), 43 U.S.C. 1744(b) 2, 4, 16, 17
§ 314(c), 43 U.S.C. 1744(c) ..... passim
§§ 501 *et seq.*, 43 U.S.C. 1761 *et seq.* 9
§ 603, 43 U.S.C. 1782 9
§ 707, 43 U.S.C. 1701 note 16
Materials Act of 1947, 30 U.S.C. 601 *et seq.* 15
U.C.C. § 9-503(2) (1971) 14
30 U.S.C. 189(b) 14
30 U.S.C. 189(f) 14

Constitution, statutes, and regulations—Continued:	Page
43 C.F.R.:	
Pt. 4:	
Section 4.21	3
Section 4.415	3
Sections 4.420 *et seq.*	3
Pt. 3030	15
Pt. 3800:	
Subpt. 3809	9
Section 3809.0-3	9
Subpt. 3833:	
Section 3833.1-3	13
Section 3833.3-1 (b) (1)	14
Miscellaneous:	
Bureau of Land Management, U.S. Dep't of the Interior, *Public Land Statistics 1983* (1984)	9, 12
44 Fed. Reg. 9720 (1979)	13
47 Fed. Reg. 56200 (1982)	13
H.R. Rep. 94-1163, 94th Cong., 2d Sess. (1976)	8, 11
H.R. Rep. 94-1724, 94th Cong., 2d Sess. (1976)	11
MacDonnell, *Public Policy for Hard-Rock Mineral-Access on Federal Lands: A Legal-Economic Analysis*, 71 Q. Colo. School of Mines 1 (1976)	7
Mineral Development on Federal Lands: Hearings Before the Subcomm. on Minerals, Materials and Fuels of the Senate Comm. on Interior and Insular Affairs, 93d Cong., 2d Sess. (1974)	7
Public Land Committee of the American Mining Congress, *The Mining Industry and the Public Lands: A Statement on Behalf of the American Mining Congress Before the Public Land Law Review Commission* (1968)	6, 7
Public Land Law Review Commission, *One Third of the Nation's Land: A Report to the President and to Congress* (1970)	11
Public Land Policy and Management Act of 1975: Hearings Before the Subcomm. on Public Lands of the House Comm. on Interior and Insular Affairs on H.R. 5101 and H.R. 5402, 94th Cong., 1st Sess. (1975)	8
S. Rep. 94-583, 94th Cong., 1st Sess. (1975)	8, 11

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UNITED STATES OF AMERICA, ET AL., APPELLANTS

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REPLY BRIEF FOR THE APPELLANTS

Appellees and their amici devote considerable space in their briefs to descriptions of various approaches Congress might have adopted in establishing filing requirements applicable to mining claims located on federal lands. For the most part, they advocate systems under which federal land managers would assume the burden of advising claimants, on a case-by-case basis, whenever they failed to comply with a statutory requirement and providing them with various opportunities to establish that they intended to retain their claims, despite the default. In the view of appellees and their amici, such alternatives would be preferable to the scheme Congress chose to enact in Section 314 of the Federal Land Policy and Management Act, 43 U.S.C. 1744, under which retention

of a mining claim is conditioned on compliance with statutory requirements for initial and annual filings.

But, of course, the issue in this case is not whether Congress has made the best possible policy choice in imposing on claimants the burdens of compliance with the filing requirements. Rather, the question is whether Congress was constitutionally barred from providing that failure to comply with those requirements results in loss of a mining claim. On that point, appellees and their amici have failed to rebut our arguments that Section 314(c) of the statute Congress enacted satisfies the Due Process Clause of the Fifth Amendment.

1. Appellees and their amici contend that conditioning retention of a mining claim on compliance with statutory filing deadlines, as Congress has done in Section 314(c), violates procedural due process. We showed in our opening brief (at 23-35) that application of the principles articulated by this Court in *Texaco, Inc.* v. *Short*, 454 U.S. 516 (1982), requires the conclusion that Section 314(c) is fully consistent with procedural due process. Appellees and their amici suggest, however, that the Court's decisions in *Mathews* v. *Eldridge*, 424 U.S. 319 (1976), and *Morrissey* v. *Brewer*, 408 U.S. 471 (1972), provide a more appropriate analytical framework. See Appellees' Br. 24-27; Mobil Am. Br. 18; Alaska Miners Ass'n Am. Br. 13-16; Colorado Mining Ass'n Br. 3. But it is clear that the procedures available to claimants in connection with the operation of Section 314(c) are fully consistent with the principles the Court applied in *Mathews* and *Morrissey*.

Under Section 314(c), the question that must be resolved is whether or not a claimant has complied with the filing requirements of Section 314(a) and (b). As we explained in our opening brief (at 28-29), appellees and other claimants receive the full procedural protections of individualized notice and opportunity for a hearing in connection with resolution of that question. For example, a claimant who apparently has failed to comply with the

requirements for annual filings under Section 314(a) receives a letter from the Bureau of Land Management notifying him that his claim is being declared void because of that default. See, *e.g.*, J.S. App. 22a-24a (letter from BLM to Madison D. Locke).[1] Before the declaration of invalidity becomes final, the claimant is given an opportunity to present evidence that he in fact has complied with the filing requirements.[2] In this case appellees were advised of their right to appeal the declaration to the Interior Board of Land Appeals (*id.* at 22a-23a). In many cases, all evidence relevant to the issue of compliance with Section 314 will appear in the written record, so that the IBLA will be able to make an accurate determination of the facts without holding an evidentiary hearing. However, if a claimant should allege additional facts that, if proved true, would establish his compliance with Section 314, he would be entitled to a hearing. See J.S. App. 20a.

Here the IBLA determined (J.S. App. 20a) that no evidentiary hearing was necessary, because appellees themselves informed the Board that they had hand delivered their affidavits of assessment work to BLM on December 31, 1980, rather than "prior to December 31," as the statute requires. In view of appellees' admission, there was no possibility that the IBLA would reach an erroneous conclusion concerning their compliance with Section 314, and, thus, the validity of their claims. See, *e.g.*, *Mathews* v. *Eldridge*, 424 U.S. at 335, 343-347; *Morrissey* v. *Brewer*, 408 U.S. at 484. Such procedures

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[1] In addition to the letter to Madison D. Locke reprinted in the appendix to the jurisdictional statement, letters were sent to appellees Rosalie E. Locke, Sam Buccambuso, and Tony Buccambuso, co-owners of the claims at issue in this case.

[2] See 43 C.F.R. 4.21 (timely filing of notice of appeal normally suspends the effect of the decision appealed from pending the decision on appeal); 43 C.F.R. 4.415 (request for hearings on appeal involving questions of fact); 43 C.F.R. 4.420 *et seq.* (hearings procedures).

are clearly consistent with the requirements of procedural due process.[8]

2. Most of the contentions put forward by appellees and their amici appear to relate to substantive due process, rather than procedural due process. Appellees and their amici take the position that Congress acted irrationally in conditioning retention of mining claims on compliance with the Section 314 filing requirements, rather than on intent to retain, or active development of, those claims. See Appellees' Br. 23; Alaska Miners Ass'n Am. Br. 16-17; Mobil Am. Br. 50; Mountain States Legal Foundation Am. Br. 2, 7. Appellees and their amici suggest further that in enacting Section 314(c) Congress acted inconsistently with its underlying objectives. In the view of appellees and their amici, Congress was concerned primarily with elimination of stale claims—a concern that is addressed by the initial filing requirement of Section 314(b); they suggest that Congress had no real interest in providing for forfeiture in the case of a claimant's failure to make a timely annual filing, at least when the claim continues to be actively developed. See Appel-

[8] Appellees and amicus Alaska Miners Association point to the fact that *Mathews* and *Morrissey* require a balancing of interests as part of the determination of what process is due in a particular situation. They urge that the strong interest of claimants in retaining their claims requires that there be notice and a hearing on the issue of whether a claimant who has failed to comply with Section 314 in fact intended to abandon his claim. See Appellees' Br. 26-27; Alaska Miners Ass'n Am. Br. 14-16. But the *Mathews*/*Morrissey* inquiry addresses only what procedures must be afforded in connection with a given determination; it cannot be used to change the nature of the determination that is to be made (*e.g.*, to convert the determination under Section 314(c) from whether a claimant has complied with the statutory filing requirements to whether a claimant intended to abandon his claim). Regardless of the relative strength of the interests of claimants and the federal government, the relevant issue under the statute continues to be compliance with the Section 314 filing requirements—an issue on which claimants have a full opportunity to be heard prior to a final declaration of invalidity.

lees' Br. 23 n.12, 26; Mobil Am. Br. 27-33; Colorado Mining Ass'n Am. Br. 9-11; Alaska Miners Ass'n Am. Br. 16.

The suggestion that Section 314(c) serves no rational purpose as it applies to annual filings is inaccurate. Of course, Congress clearly provided in Section 314(c) that claimants who failed to comply with the annual filing requirements of Section 314(a) would automatically lose their claims.[9] Thus, it should be presumed that Congress

[9] Amicus the State of Nevada appears to concede as much when it criticizes us for "arbitrary reliance" on the "literal words" of the statute. See Nevada Am. Br. 20.

Appellees suggest (Br. 27-28) that Section 314(c) could be read to require forfeiture only in cases in which a claimant has failed to make any filing of a document required by Section 314, not when a claimant has filed such a document after the time specified by the statute. That interpretation, apparently advanced for the first time in this Court, would be inconsistent with the plain language of the statute. Section 314(c) provides that a claim will be lost upon "[t]he failure to file such instruments as required by subsections (a) and (b) of this section." The very first requirement described in subsection (a) is the date by which the relevant instruments "shall" be filed. The term "as required" surely encompasses a reference to this explicit and prominent time deadline. Moreover, there would be little sense in appellees' interpretation, since it would mean that no one could ever be sure whether a claim had become invalid as a result of failure to file a required document, since the claimant could always avoid such a loss by filing the document belatedly.

Appellees and several of their amici also contend that Congress must have meant that a claim would not be lost if a claimant has "substantially complied" with the Section 314 requirements. See Appellees' Br. 28-29; Nevada Am. Br. 8-21; Alaska Miners Ass'n Am. Br. 19-21. We discussed the issue of substantial compliance in our opening brief (at 42-49), and we will not repeat that discussion here. We note, however, that none of the briefs submitted in support of appellees provides a plausible explanation of how a filing made on December 31 can be said to comply substantially with a statutory requirement that such a filing be made "prior to December 31." Nor do the briefs explain how a system based on substantial compliance could be administered as a practical matter in connection with a massive data-gathering program of the type at

itself perceived that provision as one that would advance the objectives of the statute. But it is also apparent that the mining industry joined in the judgment that such a provision would serve legitimate purposes. The provision of Section 314(c) for forfeiture of mining claims upon failure to comply with an annual filing requirement is quite similar to a proposal made by the American Mining Congress to the Public Land Law Review Commission (PLLRC) in 1968. In its statement the American Mining Congress recommended expressly "that the mining laws be amended to provide that a mining claim is conclusively presumed abandoned if some notice or other instrument is not filed in the appropriate county office by or in behalf of the owner of the mining claim at least once every three years." Public Land Committee of the American Mining Congress, *The Mining Industry and the Public Lands: A Statement on Behalf of the American Mining Congress Before the Public Land Law Review Commission* 22 (1968) [hereinafter *The Mining Industry and the Public Lands*].[5] The American Mining

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issue here. Cf., *e.g.*, Alaska Miners Ass'n Am. Br. 20 (suggesting simply that any "reasonably 'late' filing" should be considered to be in substantial compliance with Section 314).

[6] The full text of the amendment advocated by the American Mining Congress is as follows (emphasis added):

> If the owner of an unpatented lode or placer mining claim shall fail for any period of more than any three (3) successive years commencing after August 31, 1968, to file for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed or a detailed report provided for by Public Law 85-876, such failure shall be conclusively deemed to constitute the abandonment of the mining claim by the owner, but there shall, however, be no abandonment if the instrument is defective or not timely filed for record under other federal or state laws permitting filing or recording thereof, or if the instrument is filed for record by or on behalf of some but not all of the owners of the mining claim.

The Mining Industry and the Public Lands, *supra*, at 22. Much of the language of this proposed amendment is virtually identical to the language of Section 314(a)(1) and (c). In making its proposals, the American Mining Congress purported to speak on behalf of the mining industry. See *The Mining Industry and the Public Lands*, *supra*, at 1.

We are lodging a copy of the relevant portions of the American Mining Congress statement with the Clerk of the Court and providing copies to counsel for appellees and amici.

[7] The general approach advocated by the American Mining Congress was incorporated into the proposed Mineral Development Act of 1971, H.R. 10640 and S. 2542, introduced in the 92d Congress, but not reported out of committee. The so-called "industry bill" provided that failure to file a location notice or to file affidavits of annual labor by the end of the work year would render a claim void. The industry bill was reintroduced in 1974 as S. 3086 and in 1975 as H.R. 9630. See MacDonnell, *Public Policy for Hard-Rock Minerals Access on Federal Lands: A Legal-Economic Analysis*, 71 Q. Colo. School of Mines 1, 69-81 (1976).

The American Mining Congress continued to support a reversion provision under which failure to make initial and annual filings would render a claim void. See, *e.g.*, *Mineral Development on Federal Lands: Hearings Before the Subcomm. on Minerals, Materials and Fuels of the Senate Comm. on Interior and Insular Affairs*, 93d Cong., 2d Sess. 263-264 (1974) (statement of Howard L. Edwards of the Anaconda Company on behalf of the American Mining Congress); see also *id.* at 78-79, 103-105 (relevant provisions of S. 3086). Several other mining organizations, including various Colorado Mining Associations, advised the Senate subcommittee considering such legislation that they recognized the need for stringent bright-line tests in connection with any provision addressed to elimination of inactive claims. See *id.* at 310 (letter from Colorado Mining Ass'n to Sen. Clifford P. Hansen) ("We favor imposition upon claim owners of specific duty to perform specified acts within a stated period of time to indicate continuing active interest at peril of elimination of the claim."); *id.* at 332 (letter from Southwestern Minerals Exploration Ass'n to Sen. Clifford P. Hansen) ("Requirements to keep a claim active should

Congress pointed out in its recommendation (*ibid.*) that the conclusive presumption would make it unnecessary to conduct expensive contest proceedings to clear the record.[8]

In 1975, the American Mining Congress specifically endorsed the provision that became Section 314. Indeed, the organization stated that its support for enactment of a recordation requirement for mining claims was predicated on retention of the language of the House bill (which was identical in all significant respects to the language enacted as Section 314), as opposed to the Senate version of the bill (which combined a recording provision with the requirement that an application for patent for mining claims be filed within a certain number of years). *Public Land Policy and Management Act of 1975: Hearings Before the Subcomm. on Public Lands of the House Comm. on Interior and Insular Affairs on H.R. 5224 and H.R. 5622*, 94th Cong., 1st Sess. 381-382 (1975) (statement of Howard L. Edwards of the Anaconda Company on behalf of the American Mining Congress); *id.* at 164-166 (relevant provision of House subcommittee draft legislation).

As we explained in our opening brief (at 17-20), the provision that claimants who fail to make a timely annual filing automatically lose their claims furthers the statutory objective of establishing an efficient and effective system for the management of federal lands.[7] Section 314(c) provides a convenient self-executing mechanism that ensures that federal land managers will be able to assemble a centralized, up-to-date bank of information concerning the status of the massive number of mining claims located on federal lands; that in turn allows them to take actions affecting those lands on the basis of complete information about the rights of mining claimants.[8] By placing the burden of notification on the claimant (who is in the best position to know whether he wishes to retain the claim), the statute largely frees federal land managers from the cumbersome procedure of identifying claims of doubtful status and determining on a case-by-case basis whether individuals wish to retain those claims—the benefit the American Mining Congress mentioned expressly in its presentation to the FLLRC.

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be specifically spelled out in the statutes. If the requirements are not met within a specified period of time the claim should automatically become inactive.").

[7] FLPMA was intended to be a major step toward modernizing the public land laws and establishing a coherent public land policy. H.R. Rep. 94-1163, 94th Cong., 2d Sess. 1-2 (1976). It was designed to "consolidate [existing] laws, remove conflicts, and provide mining authority" and to provide "the first comprehensive, statutory statement of purposes, goals, and authority for the use and management of about 448 million acres of federally-owned lands administered by [BLM]." S. Rep. 94-583, 94th Cong., 1st Sess. 24 (1975). The provisions of FLPMA require that the Secretary of the Interior, inter alia, prepare and maintain a comprehensive inventory of all public lands and their resources (43 U.S.C. 1711(a)); develop land use plans for the public lands (43 U.S.C. 1712(a)); execute sales and exchanges of public lands (43 U.S.C. 1713, 1716); make withdrawals of public lands (43 U.S.C. 1714); grant rights of way across federal lands (43 U.S.C. 1761 *et seq.*); and recommend designation of wilderness areas to the President (43 U.S.C. 1782).

[8] Amicus Mobil Oil Corporation suggests (Br. 37-37, 46) that there is no real need for automatic invalidation of claims under Section 314(c) because BLM could determine the status of mining claims by consulting information it has collected pursuant to various other regulatory requirements, such as those found at 43 C.F.R. Subpt. 3809. But the information collected under those other regulations is different from that mandated by Congress under Section 314; it is stored in different forms and in different locations and need not be updated on a regular basis. Some claims (*e.g.*, temporarily inactive claims) are not subject to *any* of the requirements to which Mobil refers. Cf. Bureau of Land Management, U.S. Dep't of the Interior, *Public Land Statistics 1983*, at 146 (1984) (showing only 1,864 notices and plans of mining operations filed with BLM pursuant to 43 C.F.R. Subpt. 3809 during fiscal year 1983). Thus, the approach Mobil urges would not yield the centralized bank of standardized information that is made possible by Section 314 filings. Moreover, Congress presumably did not anticipate that other sources of information could substitute for Section 314 filings, since it enacted Section 314 in addition to the other FLPMA provisions that serve as authority for the regulatory scheme on which Mobil primarily relies, 43 C.F.R. Subpt. 3809. See 43 C.F.R. 3809.0-5.

Section 314(c) serves as a particularly effective enforcement mechanism by providing a strong incentive for claimants to comply with the filing requirements.

Appellees and their amici stress that both the PLLRC and the Senate committee described filing requirements as providing a solution to the problem of stale claims. They deduce from those statements that Congress could not have meant to provide for forfeiture of claims that are not stale merely because a claimant has failed to comply with the Section 314 filing requirements. See Appellees' Br. 15; Nevada Am. Br. 9-11; Alaska Miners Ass'n Am. Br. 11-12, 16; Colorado Mining Ass'n Am. Br. 9-11; Mobil Am. Br. 28-29.* But the statements cited by appellees and their amici refer to provisions that ultimately were not enacted. The PLLRC did not adopt the precise approach urged by the American Mining Congress (see pages 6-7 & note 5, *supra*). Instead, the Commission recommended that failure to file notice of existing claims within a reasonable time should constitute conclusive evidence of abandonment and that holders of existing claims should have an option to perfect their claims under new location procedures, including issuance of permits and payment of rentals and royalties. See Public Land Law Review Commission, *One Third of the Nation's Land: A Report to the President and to the Congress* 130 (1970); *id.* at 126. The Senate committee in 1975 adopted a provision similar to the PLLRC recommendation, under which retention of an existing mining claim would be conditioned on initial recordation within two years of enactment of the statute and an application for patent within ten years thereafter. S. Rep. 94-583, 94th Cong., 1st Sess. 12 (1975). The House committee, however, favored the approach the American Mining Congress urged (see pages 6, 8, *supra*), under which retention of a claim would be conditioned on compliance with both initial recordation and annual filing requirements, but not on an application for patent. H.R. Rep. 94-1163, 94th Cong., 2d Sess. 11 (1976). The conference committee voted to adopt the House version, which became Section 314. H.R. Rep. 94-1724, 94th Cong., 2d Sess. 29-30, 62 (1976).

Appellees and their amici do acknowledge that in enacting Section 314 Congress intended not only to eliminate stale claims, but also to provide for periodic notification to federal land managers concerning the status of mining claims. See Appellees' Br. 15; Nevada Am. Br. 11; Colorado Mining Ass'n Am. Br. 10-11; Mobil Am. Br. 8-9, 23. They do not dispute that the automatic invalidation provision serves as a particularly effective way to ensure that claimants will provide such notification; indeed, they do not explain what incentive there would be for claimants to make the required filings in a timely manner if there were no provision for automatic invalidation of claims for failure to comply with the statutory requirements. Appellees and their amici suggest, however, that federal land managers could adopt various procedures for notifying claimants of their failure to

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* Appellees and several amici suggest that Congress's use of the term "abandonment" signifies that Section 314(c) should be read to mean that a claim cannot be lost unless it in fact has been abandoned, as that term was used at common law. See Appellees' Br. 17-18; Mobil Am. Br. 25-27; Alaska Miners Ass'n Am. Br. 12 & n.2. But Section 314(c), read as a whole, clearly indicates that failure to comply with the filing requirements results in loss of a claim. The word "abandonment" therefore must be read to refer only to the common law *consequences* of abandonment (*i.e.*, forfeiture of a claim), see *Farrell* v. *Lockhart*, 210 U.S. 142, 147-148 (1908), not to the sort of evidence needed under common law to show that abandonment had occurred.

In this connection, we note that the suggestion (see Appellees' Br. 16-17; Colorado Mining Ass'n Am. Br. 6) that Congress, in enacting Section 314, did not intend to affect in any way the rights of claimants as they existed under the general mining laws is incorrect. Congress expressly stated in Section 302(b) of FLPMA, 43 U.S.C. 1732(b) (emphasis added): "*Except as provided in [Section 314]* * * *, no provision of this section or any other section of this Act shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act* * * *."

comply with the filing requirements and for giving them opportunities to demonstrate that they nevertheless intend to retain their claims. See Appellees' Br. 26-27; Nevada Am. Br. 25-26; Colorado Mining Ass'n Am. Br. 17-19; Alaska Miners Ass'n Am. Br. 15. But such procedures would amount essentially to a return to the cumbersome and unsatisfactory system of case-by-case contest proceedings that existed prior to the enactment of FLPMA. See Gov't Br. 3-4, 40.

Appellees and their amici appear to take the position that due process requires that the federal government, rather than claimants themselves, bear the administrative burden of ensuring that federal land managers receive standardized, up-to-date information on the status of mining claims. In addition, they apparently contend that Congress can never condition retention of a mining claim on compliance with a particular filing deadline, so long as federal land managers have some way to contact dilatory claimants and to attempt to extract the relevant information from them on a case-by-case basis. That position is simply untenable. In the context of a massive system involving close to two million mining claims located on vast areas of federal lands,[20] it is surely reasonable for Congress to conclude that, in the interests of administrative manageability, it is claimants who should bear the minimal burden of making timely filings in order to preserve their property interests.[21]

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[20] From October 21, 1976, through the end of fiscal year 1983, BLM accepted a total of 1,702,861 claims for recording. *Public Land Statistics 1983*, *supra*, at 145.

[21] Of course, it would be preferable if all claimants who intended to retain their claims would comply with the filing requirements, so that there would be no loss of active claims. However, Congress presumably considered the possibility that some claimants might lose active claims because they failed to comply with the statute and weighed it against the need for a system that would be administratively manageable. The proposals advanced by appellees and their amici demonstrate well that the goals of administrative manageability and preservation of every active claim are not easy to reconcile.

3. Many of the contentions advanced by appellees and their amici appear ultimately to amount to a claim that Section 314(c) is "unfair" and that claimants should be given a second chance of some sort before their failure to comply with the filing requirements results in loss of a claim.[22] Of course, the fact that operation of a statute may produce apparently harsh results in certain cases does not mean that the statute itself violates due process.[23] Moreover, viewed in a broader context, Section

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[22] Several amici cite numerous cases in which individuals or corporations have lost claims because of failure to comply with some aspect of the Section 314 filing requirements. See Mountain States Legal Foundation Am. Br. 5-7 & App.; Alaska Miners Ass'n Am. Br. 5, 11 & Echo. A-D. Of course, it is impossible for us to respond on a case-by-case basis in this brief, or even to describe the background facts of each case cited by amici. We note, however, that some of the instances cited appear to involve defects that are now considered "curable," *i.e.*, failures to comply with nonstatutory requirements that may be corrected within a given period of time (*e.g.*, failure to submit a $5 service fee with an initial filing may be cured by submission of the fee within 30 days of notification to claimants, see 43 C.F.R. 3833.1-2). A few instances could involve BLM determinations that were simply incorrect and that would have been reversed on administrative or judicial review. Of course, errors in application of Section 314 would not require that the provision itself be held unconstitutional.

We note that loss of active claims is likely to become less frequent as time goes on. BLM has made efforts to clarify and otherwise improve the regulations relating to the filing requirements. See 47 Fed. Reg. 10330 (1982); 44 Fed. Reg. 9720 (1979). Moreover, as we explained in our opening brief (at 31-32 n.22), BLM in 1980 initiated the practice of mailing reminder notices to claimants several months before each annual filing deadline. Appellees correctly note (Br. 5-6 n.5) that they could not have received such a reminder notice in 1980 because the information from their initial filing was not fed into the central BLM computer until March 1981, presumably because of the large backlog that resulted from the massive number of initial filings in 1979 and other start-up problems. However, this type of problem presumably will become far less common now that the system has been in place for several years.

[23] As we noted in our opening brief (at 39-40 n.31), there are many situations in which failure to comply with a statutory dead-

314(c) is hardly as "unfair" as appellees and their amici suggest.

As appellees themselves acknowledge (Br. 9 n.6), the vast majority of claimants manage to comply with the Section 314 filing requirements and thereby retain their claims. That is not surprising, since compliance with the filing requirements is neither burdensome nor difficult. In addition, there are several ways in which claimants can ensure that they will meet the statutory filing deadlines. Most obviously, they can obtain and read a copy of the statute (which provides that claimants must make their annual filings "prior to December 31") or the regulation, 43 C.F.R. 3833.2-1(b)(1) (which states that claimants must file "on or before December 30"). If claimants are uncertain about the precise deadline, they can file earlier in the year, thereby avoiding any confusion about whether the annual filing is due on December 30 or December 31. They can hand deliver their filings or check to make sure any filing they mail has reached the appropriate BLM office. And, of course, it has always been within the power of claimants to escape any regulatory requirements associated with unpatented mining claims by proceeding to patent and obtaining full ownership of the land on which a claim has been located. See, *e.g.*, *Best* v. *Humboldt Mining Co.*, 371 U.S. 334, 336 (1963) (noting risk taken by locator who chooses not to carry his claim to patent); *Block* v. *Elkhorn Mining Co.*, 163 U.S. 445, 459 (1896) ("The interest in a mining claim, prior to the payment of any money for

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line can lead to harsh results. Thus, a litigant whose counsel has misread the relevant statute, and therefore has missed a jurisdictional deadline for filing a petition for a writ of certiorari, may not obtain review by this Court; and, under U.C.C. §9-403(2) (1971), a secured creditor who fails to file a continuation statement every five years loses his secured interest. See also Gov't Br. 44 n.33 (describing 30 U.S.C. 188(b), which provides that certain oil and gas leases will terminate automatically upon the lessee's failure to make annual rental payments on or before the anniversary date of the lease).

the granting of a patent for the land, is nothing more than a right to the exclusive possession of the land based upon conditions subsequent, a failure to fulfil which forfeits the locator's interest in the claim.").

It is true that appellees have suffered a significant loss as a result of their failure to comply with the filing deadlines of Section 314.[14] On the other hand, appellees could have avoided that loss by taking some relatively simple steps.[15] It does not seem particularly "unfair" for Con-

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[14] Appellees' loss may not be so significant as it first appears. As we noted in our opening brief (at 7 n.6), appellees may not relocate their claims because common varieties of sand and gravel have been withdrawn from the coverage of the general mining laws. However, appellees might be able to enter into a contractual arrangement that would permit them to continue their mining operations on the same property, under the terms of the Materials Act of 1947, 30 U.S.C. 601 *et seq.*, and regulations thereunder, 43 C.F.R. Pt. 3600. While such a contractual arrangement might not be as lucrative as a claimant's right to mine without any obligation to make payments to the federal government (see Gov't Br. 2), appellees clearly would not be deprived of the means to earn a livelihood.

[15] Amicus Sierra Club notes (Br. 62-64 n.46) that appellees have contended that a BLM employee erroneously advised the Lockes' daughter that the deadline for their annual filing was December 31 (see Appellees' Br. 5) and suggests that BLM therefore might have been equitably estopped from determining that appellees' claims were invalid. However, the district court found it unnecessary to decide whether any BLM employee in fact had rendered such erroneous advice. See J.S. App. 2a. Nor did the district court determine whether the Lockes relied on such advice, whether reliance would have been reasonable in the circumstances of this case, whether appellees Sam Buzzamboo and Tony Buzzamboo, co-owners of the claims, had actual knowledge of the correct filing date, and other issues relevant to the issue of estoppel of a private party.

We doubt very much that BLM could have been equitably estopped on the facts of this case. As this Court has recently noted, "it is well-settled that the Government may not be estopped on the same terms as any other litigant." *Heckler* v. *Community Health Services*, No. 83-56 (May 21, 1984), slip op. 8. In view of "the public interest in ensuring that the Government can enforce the

gress to have concluded that appellees and other claimants should be responsible for taking such steps in order to preserve their claims. If Congress should conclude that unacceptable numbers of persons are forfeiting active claims because of insubstantial defaults, it may wish to amend FLPMA to provide for some sort of more flexible filing system or for relief of other sorts.[16] But neither constitutional principles nor any generalized concept of "fairness" require that this Court invalidate Section 314(c).[17]

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law" (*ibid.*), there is a heavy burden on any party that urges an exception to the general rule that the government may not be estopped (*id.* at 9). That is particularly so in cases involving public lands. See, *e.g.*, *California ex rel. State Lands Comm'n* v. *United States*, 457 U.S. 273, 276 n.4 (1982); *United States* v. *California*, 332 U.S. 19, 39-40 (1947). Moreover, the Court in *Community Health Services* suggested specifically (slip op. 13) that receipt of oral advice from government agents could not form the basis for estoppel of the government.

[16] As we noted in our opening brief (at 44), Congress has provided some relief for claimants who forfeited oil and gas placer claims through failure to meet the Section 314 deadlines. See 30 U.S.C. 188 (f).

[17] If the Court should conclude, contrary to our submission, that Section 314(c) violates due process, certain aspects of that provision might nevertheless be valid. See Section 707 of FLPMA, 43 U.S.C. 1701 note (severability clause). For example, Section 314(c) might be constitutional as applied to those persons who located their claims following the passage of Section 314, since they clearly took those claims subject to the condition that they comply with the filing requirements. See *Texaco, Inc.* v. *Short*, 454 U.S. at 542 (Brennan, J., dissenting). In addition, Section 314(c) might be valid as to those claimants who failed to comply with the requirements for initial filings under Section 314(b), because it would have been virtually impossible for federal land managers to identify and provide individual notice for each of the estimated six million claims that had been located prior to the passage of FLPMA in 1976. See Gov't Br. 3; J.S. App. 9a. Even if the Court should conclude that Section 314(c) could not survive in any application, it might wish to consider making its holding prospective only, in view of the fact that BLM and various private parties in some

For the foregoing reasons and those stated in our opening brief, the judgment of the district court should be reversed.

Respectfully submitted.

REX E. LEE
Solicitor General

OCTOBER 1984

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cases may have acted in reliance on declarations of invalidity based on Section 314(c) (see J.S. 10-11 & n.12). See, *e.g.*, *Cipriano* v. *City of Houma*, 395 U.S. 701, 706 (1969) (per curiam).

Invalidation of Section 314(c) on constitutional grounds presumably would not require invalidation of Section 314(a) and (b), the filing requirements themselves. (Of course, as we have noted previously (Gov't Br. 19-20 & n.14), it might be quite difficult for federal land managers to enforce the filing requirements in the absence of Section 314(c).) In addition, it arguably would be possible for the Court to conclude that, while a conclusive presumption of abandonment would violate due process, a rebuttable presumption of abandonment would be permissible. See Mountain States Am. Br. 8 n.5. However, the need to provide appropriate procedures for such a rebuttable presumption would create grave administrative difficulties. See pages 11-12, *supra*; Gov't Br. 40-41. We doubt, therefore, that Congress would have chosen to enact Section 314(c) with a rebuttable, as opposed to a conclusive, presumption of abandonment; thus, mere severance of the word "conclusively" from Section 314(c) would not be appropriate. See, *e.g.*, *Buckley* v. *Valeo*, 424 U.S. 1, 108-109 (1976) (per curiam) (quoting *Champlin Refining Co.* v. *Corporation Comm'n*, 286 U.S. 210, 234 (1932)).